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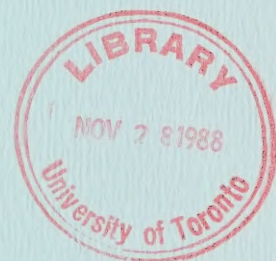
VOLUME: 58

DATE: Monday, November 14th, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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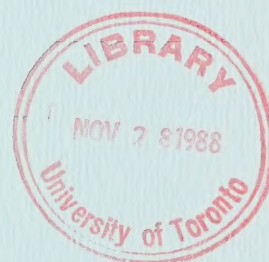
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Monday, November 14th,
1988, commencing at 1:00 p.m.

VOLUME 58

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
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MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
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MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

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MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
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MR. S.M. MAKUCH)	
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MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
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MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>CAMERON CLARK,</u> <u>FRANK KENNEDY,</u> <u>JOHN McNICOL,</u> <u>JOSEPH BEECHEY,</u> <u>NEVILLE WARD,</u> <u>GORDON PYZER, Resumed</u>	9945
Cross-Examination by Mr. Hunter	9945
Further Cross-Examination by Ms. Swenarchuk	10059

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
370	Dona Lake Agreement.	10007
371	Golden Patricia Agreement.	10007
372 .	Draft Manual entitled: Eastern Region Fish Habitat Protection Enforcement Guidelines.	10068

1 ---Upon commencing at 1:05 p.m.

2 THE CHAIRMAN: Thank you, ladies and
3 gentlemen. Good afternoon.

4 Mr. Hunter?

5 MR. HUNTER: Mr. Chairman, Mrs. Koven,
6 Mr. Martel.

7 Mr. Chairman, perhaps before I begin, we
8 had committed to preparing for the Board an exhibit on
9 FMUs, if you recall, I believe this was in Panel 1, and
10 we had indicated that we would prepare -- we had
11 entered as an exhibit a map which identifies FMUs and
12 at that time we were only in the position of providing
13 one to the Board, so at this time -- and it is Exhibit
14 26.

15 (handed)

16 THE CHAIRMAN: Thank you.

17 MR. HUNTER: Mr. Chairman, I am not -- I
18 want to thank the Board for agreeing on organizing
19 their time to allow me to cross-examine today, I
20 appreciate that, and my friend's cooperation.

21 I was wondering, I will only be
22 cross-examining Mr. Pyzer and Mr. Clark, and if the
23 other members of the panel wish to be excused I have no
24 difficulty with that. I do not know whether there will
25 be other parties examining today, but as a convenience

1 to MNR, if they wish to excuse the other members they
2 can do so, it is up to them.

3 THE CHAIRMAN: Do you want them there,
4 Mr. Freidin?

5 MR. FREIDIN: Yes, sir.

6 THE CHAIRMAN: You might as well leave
7 them, Mr. Hunter, in case they can add something to one
8 of the answers that may be more helpful.

9 MR. HUNTER: For the purposes of my
10 cross-examination, I will be dealing - and I believe
11 this was indicated to Mr. Mander - but perhaps for your
12 convenience, primarily with Exhibit 286, Exhibit 288
13 and I will be referring primarily to transcript Volume
14 52, November 2, 1988, with additional references to
15 Volume 55, Monday, November 7th, '88.

16 I will also be referring to my
17 cross-examination of Mr. Kenrick in the previous panel,
18 but I will identify those pages for you and, in fact,
19 will probably quote some of his statement unless you
20 have the exhibit there.

21 I will also be entering as two exhibits,
22 on our behalf, and I will make reference to an exhibit
23 that we had previously entered, being the Class
24 Assessment for Hydro which is Exhibit 255. I am not
25 sure that you actually will need that for the purposes

1 but I will be referring to it.

2 THE CHAIRMAN: Mr. Hunter, just before we
3 start, we are looking for 286 and 288. Had you spoken
4 to Mr. Mander earlier this morning?

5 MR. HUNTER: Yes, we did, Mr. Chairman.

6 THE CHAIRMAN: Can you tell us what those
7 exhibits are?

8 MR. HUNTER: Those are our
9 interrogatories from Nishnawbe-Aski Nation and
10 specifically in relationship to Question 3 and the
11 response of the Ministry, and 7, and I believe that
12 those were entered by Mr. Freidin.

13 Now, for the purposes, sir, of your -- it
14 is a question of what is most convenient to you, I can
15 refer to the question and the particular items or you
16 may wish to have those interrogatories in front of you.

17 THE CHAIRMAN: Well, we have -- at least
18 I have both of them now.

19 And the other one that you were referring
20 to was the Hydro Class EA?

21 MR. HUNTER: Yes, Mr. Chairman. Now, as
22 I say, this is Exhibit 255. I do not --

23 THE CHAIRMAN: Okay, I think I have got
24 it.

25 MR. HUNTER: I don't think it is

1 absolutely necessary that it be there, but if...

2 THE CHAIRMAN: I have that one as well.

3 MR. HUNTER: Okay.

4 THE CHAIRMAN: Okay.

5 MR. HUNTER: Thank you. I think, Mr.
6 Chairman, since most of our concerns are principally
7 with the socio-economic area and, Mr. Pyzer, as I
8 understand it, has been qualified as a resource
9 manager, that a substantial number of my questions will
10 be directed to him and, as I have indicated, some will
11 be directed to Mr. Clark in relationship to information
12 gathering.

13 Perhaps -- one, two, three, four, five,
14 six -- Mr. Pyzer?

15 MR. PYZER: Yes, sir.

16 MR. HUNTER: Thank you.

17 CAMERON CLARK,
18 FRANK KENNEDY,
19 JOHN McNICOL,
20 JOSEPH BEECHY,
NEVILLE WARD,
GORDON PYZER, Resumed

21 CROSS-EXAMINATION BY MR. HUNTER:

22 Q. Do you have Exhibit 286 there?

23 MR. PYZER: A. What is 286, I am sorry?

24 Q. Exhibit 286 is Question No. 3:

25 "Does the Ministry of Natural Resources

1 collect any information on subsistence
2 uses or traditional harvesting methods?"

3 And there is a rather lengthy answer.

4 A. Yes, I have that.

5 Q. Do you adopt this as your evidence,
6 sir?

7 A. I do.

8 Q. Thank you. Did you prepare this
9 response?

10 A. Correct, I did.

11 Q. You did prepare it. I would like to
12 go to the first paragraph and to the first three lines.
13 And is it correct to say that the only time you look at
14 subsistence uses is when that information is provided
15 by native people?

16 A. No, that's not correct.

17 Q. I see. So the statement that is in
18 the interrogatory is not correct; is that right, sir?

19 A. No, that's correct. It is correct as
20 it is written there.

21 Q. The statement is correct as it is
22 written there?

23 A. Yes, we rely --

24 Q. So MNR relies on the voluntary
25 provision of information. What are the other ways in

1 which you obtain that information?

2 A. Well, I think as the next two or
3 three pages outlines. Would you like me to go through
4 those?

5 Q. No, I am interested in the statement:
6 "Relies on the voluntary provision
7 of information on subsistence uses."

8 Is that the principal method by which you
9 obtain that information?

10 A. I think the -- I am trying to -- the
11 important point is realizing that those words that come
12 before it, and that is that it is important to
13 understand that we do rely on voluntary provision of
14 information on subsistence uses.

15 But I think we were very careful not to
16 put down the word 'only'. We do rely on the voluntary
17 provision of information and it is an extremely
18 important way of getting information, but it is clearly
19 not the only way.

20 Q. What are the other ways, then you can
21 respond to that question?

22 A. Well, again, as I have indicated down
23 below here, there are various reports in terms of wood
24 utilization, fur sealing, every pelt that's trapped in
25 Ontario, before it can be sold or disposed of has to be

1 stamped at a fur sealer's office which could be the
2 Ministry. We rely on those records.

3 A lot of the fur trapped in Ontario
4 certainly is harvested by Indian people and so that's a
5 good source of information. Trapline harvest cards, we
6 rely on the data from those. Monthly and annual
7 commercial fish reports. Every commercial fisherman in
8 Ontario submits a report to us and that's on a monthly
9 basis and an annual basis, and when it is submitted on
10 a monthly basis it actually indicates every day of the
11 month that a commercial fisherman was out on a lake,
12 indicates how many days he tended his nets or lifted
13 his nets, what the species composition was, et cetera.
14 So, again, that's another important way of getting
15 information.

16 As well, every fish buyer in the Province
17 of Ontario, the person who buys from the commercial
18 fisherman, also submits a return to us. So Kemp
19 Fisheries here in Thunder Bay is an example, or some
20 large fish purchasers in Minnesota. Every time they
21 buy from a commercial fisherman in Ontario, at the end
22 of the month they submit a return to us, tell us who
23 they purchased fish from, how much they paid, et
24 cetera.

25 Wild rice harvesting licences. It is a

1 mandatory requirement if you hold a wild rice
2 harvesting licence in Ontario that you must file a
3 mandatory report on the harvest.

4 So those are clearly ways that we can get
5 good information on Indian activities, although those
6 are not specifically excluded to Indians.

7 Big game harvesting cards is another
8 example. When an Indian person shoots a moose, a deer,
9 a bear, and we find out about it either from the Indian
10 himself, possibly from the Ontario Provincial Police,
11 it could be a tourist operator but when we hear that
12 in fact an Indian person has harvested a moose or a
13 deer we want to know that information because clearly
14 we will take it off the top in terms of the allocation
15 of that resource to white people, and so we record that
16 on a big game mortality card.

17 In fact, on that card you will see a
18 very specific slot that indicates road kill, train
19 kill, et cetera, et cetera, but there is a specific
20 slot on that card that indicates that an Indian has
21 harvested that animal for a subsistence purpose. So we
22 record that and it is extremely important information
23 to us, again, from an allocation point of view.

24 In other areas, in other districts, as I
25 have mentioned in this interrogatory, we have set aside

1 specific lakes, specific areas for subsistence purposes
2 and the district -- in cooperation with those Indian
3 bands, the districts do find how much resource has been
4 harvested.

5 And I have given some examples there from
6 Hearst right down into Parry Sound with the Shawanaga
7 Bay Band where, in fact, those members -- the band
8 members were concerned about the spring walleye
9 spawning run and the fact that it was deteriorating.
10 So working with that band we are monitoring how many
11 fish the band members spear on the spawning run.

12 Also, I have indicated here that we work
13 through the Ontario Renewable Resources Grant Program.
14 We have funded agencies like the University of Waterloo
15 who have undertaken specific studies in cooperation
16 with the bands and ourselves. We have hired a
17 consultant, in this case it was Huff, Standsbury,
18 McClousky, a firm out of Toronto who operated at total
19 arm's length with us.

20 While we hired them and they were
21 certainly employed by the Ministry, that consulting
22 firm were not on staff, if you will. We did want to
23 find out what Indian people were harvesting, how much
24 they were keeping for subsistence purposes, what the
25 value of the commercial fishing industry was on Lake of

1 the Woods to them, and so they operated at total arm's
2 length.

3 If you are interested, I can show you
4 some of the letters that were sent from that consulting
5 firm to the bands indicating the confidentiality of the
6 information and how it was going to be presented back
7 to the Ministry so that we wouldn't -- if there were
8 confidential pieces of information or data coming to us
9 that if they didn't want it exposed then, in fact, the
10 consultant firm would do that and protect the interests
11 of the band, if you will.

12 I have indicated also that we have
13 worked with universities through other funding
14 assistance programs. Professor Hamilton here at the
15 University of Lakehead and certainly with the Canadian
16 Wildlife Services on some studies in terms of migratory
17 birds and the importance of animals like moose and
18 other wild foods to natives in remote Ontario
19 communities.

20 During the District Fisheries Management
21 Plan that we have just gone through, subsistence
22 fishing and Indian use of the resource was extremely
23 important. And if I can use my own district as an
24 example, in Kenora we actually printed 7,050 tabloids
25 of the Fisheries Management Plan. A copy of that

1 tabloid was sent to every resident in the district,
2 every person who had a residence and we were extremely
3 careful, because we wanted the information, to ensure
4 that every Indian person, whether that was on Whitedog,
5 Grassy Narrows, every Indian reserve in our district,
6 every Indian person who had an address received a copy
7 of that tabloid.

8 And in that was our assessment of
9 subsistence use and our analysis of that and
10 questioning whether in fact it was right or wrong or
11 was there better information out there. In addition to
12 that, at the request of some of the chiefs, we were
13 asked to present that Fisheries Management Plan to the
14 reserve. That was something that we had done for no
15 other community. We did not make a special meeting or
16 come and make a special presentation to any specific
17 community, we relied more on the open-house concept.

18 But speaking with the chiefs, they
19 preferred to have a meeting where in fact we would
20 answer questions and we specifically set up meetings.
21 We had a Fisheries Management Plan open-house at Grassy
22 Narrows, we had another one at Whitedog, we had a
23 special meeting with the Shoal Lake 39 and we had
24 another special meeting with the Big Grassy Band.

25 Q. So, in other words, there is, would

1 you say, a very substantial body of information out
2 there on subsistence use?

3 A. Substantial body? I am not playing
4 games here, but what is substantial and what isn't?

5 Q. Are you happy with the level of
6 information that exists out there for the purposes of
7 planning and assessing impacts?

8 A. In many cases I would like some
9 additional data, if we could get it.

10 Q. Is there a lot of data? I mean, how
11 many boxes for the Kenora District would there be of
12 information on subsistence activity? Would it fill one
13 wall, two walls, three walls, four walls?

14 A. Obviously, we don't collect it in
15 terms of keep it there and call it subsistence use.

16 Q. How do you collect it?

17 A. Again, I have just told you, when we
18 were producing the Fisheries Management Plan --

19 Q. Where is it? Where is it? Where is
20 this data?

21 A. Yeah, if you want information, say,
22 on the Kenora District Fisheries Management Plan --

23 Q. No, no, I want to know where the data
24 is on subsistence fishing activity in the reserves you
25 are referring to, the level of the take, the

1 consumption level--

2 A. Yes.

3 Q. --the economic value of that
4 consumption? Is there data that is available with
5 respect to that activity, that subsistence activity?

6 A. I have just told you that is there.

7 Q. There is data?

8 A. Absolutely.

9 Q. And where is that data?

10 A. Well, again, as I have tried to
11 explain, the Huff, Standsbury Report, there is a very
12 detailed thick report. There are all the background
13 files associated with that socio-economic study of the
14 Lake of the Woods fishery.

15 There are chapters devoted specifically
16 to Indian subsistence use; there are chapters devoted
17 specifically to Indian commercial fishing. In the
18 Kenora District Fisheries Management Plan --

19 Q. In the Kenora District fishery, yes.

20 A. Sorry, in the Kenora District
21 Fisheries Management Plan there is a specific section
22 that talks about subsistence harvest; there is a chart
23 that indicates the poundage that we have assumed; there
24 are other charts and tables that show how we have
25 calculated that.

1 So, you know, depending on what the
2 exercise is, if you want to see the component chapters,
3 it is associated with that exercise. If you want to
4 see input into the Forest Management Plan from Grassy
5 Narrows or Whitedog -- you know, if it is the Minaki
6 Crown unit, we can certainly go to the Minaki Crown and
7 look in terms of identified interests in that planning
8 process and see what information has come forward.

9 So if are you asking me: Is there a box
10 that is labelled subsistence use or a file, the answer
11 is no. But there are areas within each of those
12 planning processes and, in terms of the resource that's
13 being inventoried or studied or examined or analysed or
14 planned, there is certainly data and information there
15 in terms of subsistence use.

16 Q. Is this data specific to the Kenora
17 area? Let me put it this way: Is there is comparable
18 data, for example, in Sioux Lookout, Geraldton?

19 A. Yes, I believe there is.

20 Q. Okay.

21 A. When I put this response together I
22 paged all of the districts that were producing forest
23 management plans at the time, and there was something I
24 believe in the neighbourhood of 17 to 20 different
25 districts across the north. And I circulated this and

1 asked them, and so what you are seeing is a composite
2 of what all of the districts have given me.

3 Q. This information then is based upon
4 information given to you by district managers in all of
5 the other regions; is that right?

6 It is not based upon your own personal
7 knowledge of the information that's available, it is
8 based upon information that has been given to you by
9 district managers?

10 A. All of the references to Kenora are
11 based on my personal knowledge and the balance of them,
12 obviously, are not.

13 Q. And the references to the rest of
14 northern Ontario?

15 A. Yes.

16 Q. They are based on your personal
17 knowledge?

18 A. No, they are based on input I have
19 received from other managers.

20 Q. Have you ever heard of Cedars
21 Channels, Mr. Pyzer?

22 A. Pardon me?

23 Q. Cedar Channels? Do you know of the
24 negotiations between the Osnaburgh Band and Cedars
25 Channels?

1 A. No, I don't.

2 Q. Thank you. Would you say in
3 relationship to the preparation of information, that
4 the principal responsibility for providing information
5 rests with the native people?

6 A. Principal?

7 Q. 51 per cent?

8 A. You know, again, it's...

9 Q. Generally.

10 A. When we were presenting our
11 evidence - certainly when I was - I think one of the
12 key points I wanted to make at the time to the Board,
13 and certainly hope that I did, was when we deal with
14 all of the stakeholder, whether they are tourist
15 operators, commercial fishermen, wild rice harvesters,
16 whoever, we have a great deal of information and data
17 on those various activities, and we present that in the
18 best way that we can.

19 And whenever we go in terms of a public
20 forum and present that at an open house or a public
21 meeting, certainly one of the critical things that we
22 want people to do is to take a look at that and tell us
23 whether it is right or wrong. We do have erasers on
24 the end of our pencils and we do make mistakes, and
25 that's one of the critical reasons for having those

1 open houses.

2 Q. I didn't ask you about open houses,
3 Mr. Pyzer, I asked you whether or not there was a
4 requirement -- the onus was on the native community or
5 the principal information you obtained on subsistence
6 farming came from the native community. Yes or no?

7 I don't want to ask -- I will ask you
8 later about open houses; I am asking about information,
9 how you get the information, who gives it to you.

10 A. Yes, but, you know, we have just
11 gone through three pages of different data.

12 Q. I just asked you a question.

13 A. I'm trying to answer.

14 Q. Is the principal responsibility for
15 the provision of information --

16 THE CHAIRMAN: Just a moment, Mr. Hunter.

17 Mr. Pyzer, I think this will go in a more
18 expeditious manner, particularly in cross-examination,
19 if you pay attention to the question asked and try and
20 answer the question specifically.

21 I know that there is ways that you can
22 embellish any kind of answer to any kind of question,
23 but if there is something that you feel must be added
24 over and above a concise answer to the question asked,
25 then perhaps your counsel can draw that out in

1 re-examination, if necessary.

2 MR. PYZER: I will try and give a one
3 word answer, Mr. Chairman. But, in doing so, you can
4 choose either a yes or a no and I am not comfortable
5 with either --

6 THE CHAIRMAN: We are not saying that you
7 have to give precisely a yes or no answer. But, rather
8 than reiterating information that is not precisely on
9 topic to the question asked, perhaps you can try and
10 focus your answers a little more.

11 MR. FREIDIN: Perhaps the witness should
12 be advised that if he feels that the question is posed
13 in a manner in which he cannot give an answer one way
14 or the other, perhaps he should be advised that he can
15 answer that way and provide an explanation of why he
16 can't answer it.

17 THE CHAIRMAN: All right. And you, of
18 course, Mr. Freidin, can draw something else that you
19 feel is necessary out in re-examination, if you feel it
20 is necessary at that point.

21 Sorry, Mr. Hunter. Perhaps you would
22 like to rephrase that last question.

23 MR. HUNTER: I will try again. Thank
24 you.

25 Q. Specifically with respect to

1 subsistence use activity, is the principal
2 responsibility for providing that information to MNR --
3 does that principal responsibility rest with the native
4 community?

5 MR. PYZER: A. Phrased like that, if we
6 are talking about the 51 per cent I would say, yes, 51
7 and 49.

8 Q. Perhaps we could go to the transcript
9 of November 2nd and to what I believe is your direct
10 evidence -- sorry, it is direct evidence, it wasn't
11 cross.

12 MR. FREIDIN: Do you want the witness to
13 have a copy of the transcript so he can follow along?

14 MR. HUNTER: Sure.

15 MR. FREIDIN: (handed)

16 MR. HUNTER: Q. Mr. Pyzer, I will ask
17 you to refer to the second paragraph.

18 MR. PYZER: A. I am sorry, what page are
19 we on?

20 Q. I am referring, firstly, to Exhibit
21 286, Question 3.

22 A. Yes.

23 Q. And I would ask you to look at the
24 second paragraph. And then if you would go to your
25 transcript at page 8825, and I would like to try to

1 understand the relationship between the evidence which
2 is in the interrogatory which says:

3 "The most important means by which MNR
4 collects information on data and data on
5 subsistence uses is via public
6 consultation during the preparation of
7 specific resource management plans,
8 public consultation."

9 And then you go on page 8825 and you say:

10 "And I think Cam has made an extremely
11 good point, is that we don't rely upon
12 those formal meetings in terms of the
13 timber management plan. They are
14 extremely important and they are good for
15 people to come forward, but I would
16 almost go so far as to say that they are
17 almost a check, that everything that
18 people have been telling us all year long
19 and for the past 10 or 15 or 20 years."

20 And what I am trying to come to grips
21 with is: Which statement reflects the reality that's
22 out there; is it paragraph 2 in which there is a public
23 consultation process, or is it your statement here that
24 we didn't rely on these formal meetings?

25 What is it that you do rely on? What is

1 it that is important in this area?

2 A. Yes, I can see your confusion because
3 actually I read those two and I see that I totally
4 complemented both of those statements.

5 But the point I am trying to get across
6 here is: Let's talk -- in terms of timber management
7 planning and the impact, say, on -- or how many moose
8 have been shot by a particular reserve, we don't ever
9 talk about moose being shot in a timber management
10 plan. We have relied -- we have got that information
11 somewhere else.

12 And what I am saying is is if that's
13 important -- if that were important and we were
14 presenting that at a public open house, while we have
15 it as a result of these -- what I am saying here, in
16 terms of the transcript, we rely on that open house in
17 terms of the public meetings, the public forums to tell
18 us that in fact, yes, we do have the most up-to-date
19 information; yes, we have analysed it properly; and,
20 yes, we have come to the right conclusions.

21 So I am saying that they do complement
22 each other.

23 Q. So the purpose of the public houses
24 is essentially for MNR to identify what it is that they
25 are going to do or what it is that they want to do; is

1 that correct?

2 A. Well, true. If I can also just draw
3 attention in terms of Exhibit 286 there, it is saying
4 that by a public consultation during the preparation of
5 specific resource mangement plans.

6 Q. Mm-hmm.

7 A. That's not simply timber management.
8 So you will see that there are fisheries management,
9 wildlife management, could be a wild rice plan, a
10 timber access plan -- or, sorry, a road access plan, et
11 cetera.

12 So we are saying that we can -- having
13 gathered information by whatever means, again, then at
14 the public open houses, we are confirming that in fact
15 we have analysed it properly.

16 Q. Well, is it not the case that the
17 purpose of the public house is to present to the public
18 the proposed plan, whether it be a timber management
19 plan or whether it be a fisheries plan?

20 A. Oh, no, absolutely not.

21 Q. So the public process is there for
22 you to obtain information; in other words, the plan has
23 not already been prepared; is that correct?

24 A. Yes. I am not sure whose evidence it
25 was that talked about the planning process, but I

1 believe the Ministry has presented evidence on how we
2 do resource management plans starting from basic data
3 collection and we go through a step-by-step process to
4 prepare those plans; collecting data, information,
5 draft policies, if you will.

6 Q. And there is a public consultation
7 process that's clearly identified in terms of obtaining
8 information for the purposes of preparing those plans;
9 is that correct, sir?

10 A. I am sorry, would you say that again?

11 Q. Let's start right again, right at the
12 beginning. I believe I asked you: Was the purpose of
13 the public forum, the public houses there for you to
14 present proposed plans to communities and you said no.

15 I said: Is it, therefore, the purpose to
16 obtain information to prepare plans, and I believe you
17 said yes. I am simply then asking you --

18 A. I didn't think I said a yes or a no
19 to both of those. I think what I said was that we use
20 open houses in terms of a planning process at very many
21 stages, right from the collection of data to confirming
22 policies, draft plan stages. We even have an open
23 house to review the final document.

24 So depending on the stage of the --

25 Q. So, therefore, how many public

1 consultation processes--

2 MR. FREIDIN: Would you let the witness
3 answer the question, please, Mr. Hunter.

4 MR. HUNTER: Q. --processes would you
5 have in terms of the preparation of an FMA? How many
6 public houses would you hold in the communities in
7 relationship to the preparation of an FMA?

8 MR. PYZER: A. I have never been
9 involved in the preparation of an FMA, I don't know.

10 Q. I see. But the evidence you have
11 indicated suggests to me that there would be a public
12 consultation before you prepared the FMA; is that
13 correct? Is that what happens?

14 A. I have not been associated.

15 Q. I see. Then how could you identify
16 what processes took place which you just did?

17 THE CHAIRMAN: Mr. Hunter, perhaps Mr.
18 Kennedy can answer that question.

19 MR. HUNTER: You will have to help me.
20 Is Mr. Kennedy -- does he have -- he will have to help
21 me, Mr. Chairman, because I don't have any evidence
22 before me what Mr. Kennedy has said previously, so...

23 THE CHAIRMAN: No, but as the Board
24 understands, Mr. Kennedy has had experience in the
25 preparation of FMAs so he may be able to answer your

1 question: During the FMA process, how is the public --

2 MR. HUNTER: I don't want to just limit
3 it to FMAs. Because, as you know, the FMAs have
4 already been established before...

5 THE CHAIRMAN: No, we understand that.
6 But you asked this witness the answer, he said he
7 couldn't answer that.

8 MR. HUNTER: Including timber management
9 plans.

10 MR. FREIDIN: Mr. Chairman, perhaps the
11 questioner could clarify whether he is asking about the
12 preparation of timber management plans on forest
13 management agreement management units, or whether he
14 really wants information on the creation of forest
15 management agreements themselves. I think perhaps
16 that's the problem.

17 MR. HUNTER: I would appreciate if the
18 evidence could be with respect to both, Mr. Chairman.

19 That is exactly the numbers of public
20 consultation stages that the Ministry goes through in
21 the preparation of an FMA and exactly the number of
22 public consultation stages that the Ministry goes
23 through with the preparation of a timber management
24 plan.

25 THE CHAIRMAN: All right. Could

1 anybody --

2 MR. HUNTER: It is fairly
3 straightforward.

4 THE CHAIRMAN: Could anybody on this
5 panel provide that answer?

6 MR. PYZER: I think Mr. Kennedy is going
7 to.

8 MR. KENNEDY: If I could just have a
9 moment.

10 MR. MARTEL: Could I ask Mr. Pyzer a
11 question then while Mr. Kennedy is getting his answer
12 ready for Mr. Hunter because I am not sure what's going
13 on.

14 . If I can go back, it says that public
15 forums were to identify what MNR wants to do, and it
16 could be timber management, it could be fishery
17 management, and then it was stated that open houses
18 confirm the analysis that MNR has done.

19 And then the question I think was put:
20 Public houses or forums are for the purpose of
21 presenting the plan to the community and I thought the
22 answer I got was no, that wasn't the purpose.

23 MR. HUNTER: That's right.

24 MR. MARTEL: And I thought that that's
25 what public houses were for, that we gave people

1 information, told them what we were going to do, and
2 people had an opportunity to have some input in the
3 ultimate decision that would be rendered.

4 MR. PYZER: That's exactly the case. All
5 I am trying to say is that public open houses and our
6 open houses are not an end of process kind of exercise.

7 We present a draft plan and say: Now, do
8 you approve it or not. What I am saying is that there
9 are many steps associated with that right at the very
10 front end where we would like people to come forward at
11 that very first information session and confirm the
12 data that we have got, confirm the areas of concern
13 that we have identified.

14 It is not just an end of process exercise
15 to rubber stamp an approval or not approval. We are
16 trying to front end it as much as possible, and that's
17 the point I was trying to make.

18 MR. MARTEL: But in the final analysis,
19 would you present a plan then at, let's say, whatever
20 your -- in the process, the last public house that you
21 have, or the last public forum, is the plan laid before
22 the public then for any input from them at that stage,
23 even at that late stage, let's put it that way?

24 MR. PYZER: Absolutely a draft plan is
25 put forward and then once the draft plan is put forward

1 and an approved plan is prepared, there is another
2 notice that goes out to everyone, another advertisement
3 in the newspaper and I believe it is a 60-day period
4 where any member of the public can come forward and
5 review the approved draft plan.

6 Again, the only point I am trying to make
7 is that that is not the only step of public
8 consultation, to come and look at an approved plan.

9 In fact, we really do to try and front
10 end those decisions as much as possible. That is not
11 healthy to have people come forward at the very last
12 minute on an approved draft plan and find out that they
13 have all kinds of concern. Obviously that is what we
14 are trying to avoid.

15 THE CHAIRMAN: Mr. Kennedy, can you
16 answer those two questions put forward by Mr. Hunter
17 earlier?

18 MR. KENNEDY: Yes, I believe I can shed
19 some light on it.

20 First of all, I would state that with the
21 forest management agreements I would consider the
22 public consultation that goes on at that time as -- or
23 just put into framework, that further public
24 consultation takes place during timber management plan
25 production itself, but during the negotiation of a

1 forest management agreement there is at least one open
2 house. So we use the words.

3 With the timber management planning
4 process, the public consultation, I believe the
5 pertinent parts to this discussion are found in the EA
6 Document between pages 153 and 165 where there is an
7 indication that there are four formal opportunities for
8 public consultation, and the best way that I find to
9 look at it as a reminder is to look at page 155 of the
10 document and look at the left-hand side of the chart.

11 I will just give you a moment to locate
12 that.

13 MR. HUNTER: Q. Mr. Kennedy, I don't
14 want to interrupt, I just want to clarify. That is
15 what you are proposing to do. I think my question was,
16 and if I am wrong, then tell me: What is it that you
17 have been doing?

18 MR. KENNEDY: A. This is what we have
19 been doing, Mr. Hunter.

20 Q. Okay.

21 A. Again, the place that I draw your
22 attention to is the left-hand side of the chart -- or
23 the figure on page 155.

24 Q. Mm-hmm.

25 A. And a synopsis of that information on

1 the top of 156, and also for further reading I
2 recommend the balance of the chapter up to page 165.

3 If I could just highlight then the four
4 key steps are: An invitation to participate at the
5 beginning of the process which would take -- which
6 would occur approximately one year in advance of the
7 anticipated due date of the plan. So the process takes
8 about one year in time in the very beginning step in
9 the invitation to participate.

10 There is an information centre which we
11 commonly refer to as an open house which also occurs
12 partly through the process.

13 Following the information centre and the
14 input from the public, there is a public review of the
15 draft plan. So there is draft information put out in
16 terms of the actions that are anticipated to take place
17 during the five years, and following that there is
18 public inspection of the plan, and the plan at that
19 time, the public inspection, would be an MNR approved
20 plan still subject to public scrutiny.

21 Perhaps one of the more important things
22 that I should highlight though in conjunction with the
23 consultation process throughout, is the combination of
24 notice requirements to individuals, individuals and/or
25 organizations.

1 So, first of all, there is a direct
2 written invitation to those people that are known to
3 have an interest in timber management planning
4 activities on the management unit, specifically written
5 notice to each individual. There is also direct
6 written notice to organizations that are known to exist
7 within the area and, in many cases, to regional and
8 provincial level organizations as well.

9 If we were talking of Indians in
10 particular, it would be conceivable that a trapper - if
11 an Indian was a trapper - would receive direct written
12 notice, as well as the band council would receive
13 notice of the fact that the timber management planning
14 process was beginning and encourage people to get
15 involved.

16 As well as that, there is a general
17 public notice which is usually in the form of a
18 newspaper ad - although radio ads, I understand, have
19 been used - and those are used to try and cover off
20 those people of the general -- that would have a
21 general interest in the activities that are to take
22 place on that management unit. But they may not be
23 resource user and, consequently, wouldn't have received
24 a specific written notice.

25 Also, we provide direction to our staff

1 to use verbal notice where appropriate and that, by and
2 large, is meant to encourage our staff to contact those
3 individuals that may not be receiving written notice,
4 those that perhaps are illiterate or those that may not
5 be receiving published advertisements.

6 We found this particularly important in
7 the area -- even the area around Dryden where newspaper
8 advertisements would only appear weekly, with the
9 weekly newspaper and, consequently, it was conceivable
10 that people could be missed and it was important to
11 have word of mouth spread the information.

12 So those are the key four areas in which
13 publics are encouraged to participate in timber
14 management planning process, one of the resource plans,
15 also the type of general notice that we use, the manner
16 in which we notify people to become involved, and the
17 way in which we follow-up on the comments.

18 And I understand that there are similar
19 elements to this consultation used in the other
20 resource plans.

21 Q. Mr. Kennedy, just perhaps we can
22 clarify some of this. If we go to those pages, for
23 example, 154, 156, 157, and 158, you will notice that
24 there is what, as I understand it, are additions which
25 have been put in.

1 In other words, if I specifically draw
2 your attention to 154, we have in type script a 62 and
3 then you have nine month. And then you go down below
4 that, a 6-month period for formal review and approval
5 process.

6 As I understand it, a substantial amount
7 of the illiteration which is in this Class EA Document
8 was put in in 1987. Let me draw you specifically to
9 156.

10 In other words, the original Class
11 Assessment Document did not specifically mention native
12 communities. This is something that was inserted in
13 the 1987 document; am I correct there, sir?

14 A. I believe you are.

15 Q. Yes. And, therefore, my concern is
16 that certainly up to 1987 there did not appear to be
17 any formal recognition of a requirement to contact
18 native communities. Would you accept that, sir?

19 A. I would say you are correct, in the
20 one year that it was implemented in its draft form,
21 yes, there was not a requirement to notify, as is
22 stated now in the June, '87 version, and that
23 requirement that is in there now is a result of the
24 experiences that we gained during the implementation of
25 the draft, which I think was a very beneficial year

1 where we have been able to learn some of the
2 improvements necessary in the planning process and in
3 the documentation requirements to reflect the
4 experiences that our districts were having, one of
5 which is the experiences that I have had.

6 Q. Now, am I correct in assuming then
7 that, to your knowledge, that it has only been since
8 1987 that contact has been made with the native
9 communities?

10 A. No, I would say that is incorrect.

11 Q. In a formal sense, in a formal way?

12 A. In a formalized direction to do so, I
13 would say: Yes, you are correct. But I am -- speaking
14 from my experience, we were in the practice of
15 consulting all organizations within the district for
16 several years, I would say around five years.

17 Q. Are you - I am not familiar - are you
18 with the Kenora District as well?

19 A. No, actually I am from -- previously
20 from the Dryden District.

21 Q. Dryden. And is that where your
22 experience was limited to?

23 A. Yes, it is, in this regard.

24 Q. In this regard. So, therefore, as I
25 understand it, it is even though this - well, it is not

1 even though - the schedule which has been outlined in
2 Figure 212 and which is presumably supported by the
3 policy statements in the accompanying sections, that is
4 now what is being undertaken by the Ministry in terms
5 of notification; is that correct?

6 A. I don't think I would use the term
7 policy statement but, yes, the pages that follow.

8 Q. The guidelines then, the guidelines?

9 A. The pages that follow are the current
10 direction to staff, yes.

11 Q. Mm-hmm. Okay, fine.

12 Mr. Pyzer, I just want to draw your
13 attention to the bottom of page 2 of the interrogatory:

14 "During the development of District
15 Fisheries Management..."

16 Now, I think my first question to you is
17 whether or not the process which you have identified on
18 that page is specific to Kenora or whether that process
19 applies to other districts in northern Ontario?

20 The last paragraph--

21 MR. PYZER: A. Yes.

22 Q. --on page 2.

23 A. Yes. I can tell you that it was
24 specific at least to all the districts in the northwest
25 region, the region that I take my direction from. So

1 certainly it would have been in Fort Frances, Kenora,
2 Red Lake, Sioux Lookout, Ignace.

3 Q. This applies to Sioux Lookout, Mr.
4 Pyzer?

5 A. Again, the regional office handles
6 all six of those regions -- or, all six of those
7 districts rather, and the lead for this exercise was
8 coordinated by the region, so I assume that, yes, it
9 was.

10 In fact, there was centralized printing
11 of most of the documents, the region handled most of
12 the printing in terms of volumes and that sort of
13 thing. And there certainly was a regional planning
14 team of all of the authors of those six documents,
15 that's why they all look very similar, and the public
16 consultation was handled by an information officer that
17 was in the region and, again, I believe that that
18 direction was the same to all regions, wouldn't just be
19 to Kenora.

20 Q. So there is a District Fisheries
21 Management Plan for Sioux Lookout and the processes
22 that are identified as applying to the Kenora District
23 were applied in other districts; is that correct, sir?

24 A. That is my understanding.

25 Q. Thank you. And that understanding is

1 based upon information given to you by those district
2 managers; is that correct, sir?

3 A. Well, it is based again on the
4 direction that I received from the region which went in
5 the form -- it is not specific direction to a district.
6 And so, yes, my understanding that all six will be
7 exactly the same.

8 Q. Excuse me.

9 Given that direction, I have a very
10 simple question: Why aren't the same processes
11 instituted with respect to timber management plans?

12 A. Could you be more specific?

13 Q. In terms of adopting the process that
14 you have here with respect to fisheries.

15 A. I am sorry, I don't quite understand.
16 I believe we are doing basically the very same process.

17 Q. You believe -- so the process that
18 you have identified under district fisheries management
19 plans is the process that you are using with the
20 establishment of timber management plans; is that
21 correct?

22 A. In terms of a planning process.

23 Q. Planning process.

24 A. That's correct. Now, if your
25 question - and I am not sure if this is - about the

1 tabloids. The big difference, obviously, is one is a
2 20-year exercise versus 5-year timber management plans.
3 We are talking about a planning horizon here of 20
4 years.

5 So we will presumably be doing this in
6 terms of this kind of scale once every 20 years. As
7 well, it is the first time fisheries --

8 Q. For timber management plans?

9 A. No, fisheries management plans.

10 Q. Fisheries management, okay. So they
11 are 20-year plans?

12 A. That's correct.

13 Q. And FMAs are 20-year; is that
14 correct.

15 A. FMAs, no.

16 Q. For forest management - sorry --

17 A. Forest management planning?

18 Q. No, forest management agreements are
19 20-year agreements; aren't they?

20 A. No. Oh, forest management --

21 Q. Mm-hmm.

22 A. The agreement themselves are.

23 Q. Yes, they are.

24 A. That's correct.

25 Q. But the individual timber management

1 plans can be in five-year units; am I correct?

2 A. They are five years.

3 Q. Okay.

4 MR. CLARK: A. Mr. Hunter, if I may, I
5 may be able to help a little in this particular issue.

6 It may be helpful for me to refer back to
7 Panel 1 to a document referred to as a Framework for
8 Resource Management Planning in MNR because I think
9 what you are talking about here is how we undertake
10 public consultation generally and whether the
11 requirements are essentially the same for resource
12 management plans or different, and whether that has any
13 implications for timber management.

14 On page 199 of that document, I will just
15 read a section because I think it is the general
16 direction that Ministry staff have and the section
17 reads:

18 "The extent and level of public
19 consultation will vary in accordance with
20 the significance of the particular
21 resources under consideration and the
22 level and extent of public concern over
23 issues. Although particular user groups
24 may be more directly affected by the
25 outcome of the planning process, managers

1 should try to reach a broad cross-section
2 giving all segments of public
3 opportunities to be consulted..." et
4 cetera et cetera.

5 I think the point I am making here is
6 that there aren't any hard and fast rules. There is
7 specific direction contained in the Class EA concerning
8 timber management. There is nothing that says you
9 can't go further, and I am getting back to an old theme
10 that I have been harping on and that is that we have
11 professional people at the local level who have to make
12 judgments about what the most appropriate way of doing
13 business is and, in that context, the Class EA
14 identifies a certain level of participation.

15 If a district feels that more is required
16 in order to meet the basic intent of this statement
17 here, then I would expect that they would do that.

18 Q. Thank you, Mr. Clark.

19 MR. MARTEL: Can I get one more
20 clarification before you go on? I think someone said
21 that public consultation in FMAs, there was at least
22 one open house.

23 What constitutes that difference, that
24 you might have four in a timber management planning
25 process and with a forest management agreement, where

1 you have four opportunities, and in an FMA where -- I
2 think I heard someone say there is just one, at least
3 one, I think were the words used.

4 MR. KENNEDY: Yes, Mr. Martel, those were
5 the words that I chose.

6 It is important to remember that there
7 are three types of management units in the province and
8 those that have a forest management agreement status
9 still undergo the same timber management planning
10 process as the other two forms of units, being the
11 Crown units and company management units, and all of
12 that is documented in the Class EA.

13 So the important thing is that there is a
14 similar planning process in place and that part of that
15 planning process is four formal opportunities for
16 public consultation.

17 More specific to your question, though,
18 as to the number of open houses in the development of a
19 forest management agreement, my recollection is that
20 there is at least one. I am somewhat rusty on that at
21 the moment. I know that there is one other, what I
22 would equate to, a public inspection at the time of the
23 signing, but I do not recall if there are additional
24 open houses during the development.

25 But certainly the activities that will

1 take place in that management unit are not -- and the
2 locations at which they will occur, are not determined
3 until the stage of timber management plan production
4 which, again, falls within the same process as the
5 balance of the units and there are the four formal
6 opportunities for consultation.

7 MR. HUNTER: Q. Mr. Pyzer, just so I can
8 be absolutely clear on this. The district management
9 plan or fisheries plan I believe for the Sioux Lookout
10 area includes a potential co-management agreement
11 between the Osnaburgh Band. Are you familiar with this
12 at all?

13 MR. PYZER: A. No, I am not.

14 Q. You are not familiar with the
15 circumstances under which this agreement came to be?

16 A. No, I am not.

17 Q. Okay. If I could draw your attention
18 to 8838 and 8839, and, again, I believe this is your
19 evidence. I am intrigued by the statement at the top
20 of 8839:

21 "I don't want to see 5,000 people at that
22 first open house, I would rather see zero
23 with the belief that we front ended that
24 process and we have dealt with those
25 concerns and they are quite happy with

1 what we have done."

2 Am I correct in assuming that you have
3 done your job if nobody shows up at an open house? Is
4 that the intent of that statement?

5 A. Yes, that's right, trying to
6 generalize the fact that the ideal solution, in terms
7 of how the Ministry does its business, how we meet and
8 consult with people on a day-to-day basis, how we deal
9 with our stakeholders as part of our regular jobs, it
10 would be an absolute ideal if we could go through any
11 planning process without anyone ever showing up and
12 when they took a look at that final approved plan said:
13 Yes, this is exactly what we want. That would be the
14 ideal.

15 Q. And what supports that, if I
16 understand your evidence - and I will be getting to it
17 in more specific terms - is the informal process; is
18 that correct? It is the way in which, on an informal
19 level, you obtain information that gives you the
20 basis - to use your language - front end the process;
21 is that correct?

22 A. Yes, it is dealing with the specific
23 programs that we deal with. It is dealing with
24 commercial fishermen on a day-to-day basis with their
25 day-to-day problems and issues, it's dealing with

1 trappers and traplines and quotas. If we have done all
2 of that, yes, that's right, our regular day-to-day
3 operations.

4 Q. So the converse then would also be
5 true, if you suddenly did have 5,000 people showing up,
6 you would be in a lot of trouble?

7 A. It could.

8 Q. Okay.

9 A. I can think of lots of examples
10 where -- you know, in terms of publicizing meetings
11 and, unfortunately, not too many of them were MNR
12 oriented, but where it didn't take very much to
13 generate an overflow into the town hall and
14 thousands -- or hundreds of people spilling out and a
15 lot of vociferous comments.

16 Q. We wouldn't want that, would we?

17 A. No, we absolutely wouldn't.

18 Q. Absolutely not.

19 Page 8840, Mr. Clark. Perhaps we will
20 give Mr. Pyzer a break for a moment, but we will be
21 back.

22 I don't want to get into just plain
23 words, but you have used them. You talk here about the
24 deciding function. Is that another word for
25 decision-making function, or is this - what is the

1 value that is involved in that word?

2 MR. CLARK: A. Well, I was using it in
3 the context of identifying the roles of various levels
4 in the organization. And so I made reference deciding
5 what to do, where to do it, how much to do, and I
6 talked about that in the context of providing strategic
7 direction for the Ministry as a whole.

8 Q. Okay, Mr. Clark. Perhaps you can
9 help me though, because you then have at 8841:

10 "But if you take the three levels that
11 were spoken to in earlier evidence..."

12 I am presuming, sir, that is principally
13 Panel 1; is that correct?

14 A. That's correct.

15 Q. "...main office obviously fits closer
16 to the deciding end."

17 Does that mean the hated Toronto office;
18 is that the...

19 A. The heated Toronto office.

20 Q. The hated Toronto office, the
21 Kremlin, okay.

22 A. Did you say hated or heated?

23 Q. Well, I said hated, you said heated.

24 We used -- the AG used to refer to 18
25 King as the Kremlin or the cave of the winds. I am

1 sure you have your euphamisms.

2 MR. FREIDIN: I have never heard it
3 referred to as that when I was there.

4 MR. HUNTER: And look where we are now.

5 Q. Now, Mr. Clark, help me there. When
6 you say:

7 "Obviously fits closer to the deciding
8 end..."

9 Again, I am not asking for precise
10 numbers, but does that reflect the fact that the main
11 office makes most of the decisions?

12 MR. CLARK: A. It refers to the fact
13 that they are involved in the development of corporate
14 direction for the Ministry.

15 No, it does not refer to the fact that
16 they make most of the decisions, and I think somewhere
17 else in there I reference the fact that all levels of
18 the organization are involved in deciding and doing,
19 but the distinction that I made is at the field level
20 the doing is very apparent; it is building roads,
21 planting trees, operating parks, holding open houses.
22 That is the distinction I was making. It is a
23 qualitative one, if you want.

24 Q. And it is those policies, those
25 guidelines which affect your decision-making at the

1 local level?

2 A. Well, absolutely. The point that I
3 have emphasized is that we encourage decision-makers at
4 the local level to exercise professional judgment, but
5 within the context of corporate direction.

6 Q. Okay. We will come back to that
7 because I think that is an important -- just bear with
8 me one second.

9 Now, perhaps, Mr. Clark and/or Mr. Pyzer,
10 can help me with this. In terms of timber management
11 and the impacts that result from it, in your view,
12 would those impacts be different on native and
13 non-native communities in northern districts?

14 MR. CLARK: A. I am hesitant to discuss
15 this in detail because I think it is the subject of
16 several panels to come, particularly Panel 10, 11, 12
17 and 13, and 14.

18 I don't like to make the distinction
19 between native communities and non-native communities
20 because I think if you are going to make that kind of
21 distinction you may want to make it between -- among
22 native communities as well, that it is very hard to
23 generalize about these kinds of things.

24 Q. Well, perhaps you can help me then,
25 Mr. Clark. Why is it hard to generalize about the

1 impacts on communities?

2 A. Well, I think that the impacts will
3 vary depending on the aspirations of the particular
4 community and their particular circumstances.

5 Q. That would apply to both native and
6 non-native?

7 A. Correct.

8 Q. So, therefore, if it is hard -- let
9 me begin with a positive, and I think that this is
10 reflected in your testimony as well as that of Mr.
11 Pyzer's. To what degree are site-specific or local
12 characteristics determinative of what a timber
13 management plan should do, or how it should be planned,
14 what it should take into consideration?

15 A. Could you perhaps rephrase that
16 slightly, I just want to make sure I understand what
17 you are asking.

18 Q. Well, I asked you whether you could
19 identify for us whether impacts on native and
20 non-native communities would be different in terms of
21 timber management activity.

22 You indicated you were reluctant to do
23 so, and then we broke that down even further, that
24 there could be different effects on different native
25 communities. And I believe I said to you that - if I

1 didn't, then I will do it now - then, presumably the
2 same thing could apply to non-native communities?

3 A. Correct.

4 Q. So, therefore, it seems to me the
5 question I am putting to you is: How site-specific,
6 how localized does the information have to be in order
7 to have an effective timber management plan, effective
8 obviously from my side of the street as being one which
9 would minimize its impact on the native communities,
10 and if I could be so bold I would say the same thing in
11 terms of the non-native communities.

12 What level of information do you need in
13 order to effectively plan an environmentally sound
14 timber management plan?

15 A. Well, I will go back to my earlier
16 testimony and I said the kind and amount of information
17 is dependent on the decision being made, and I
18 specifically talked about the risk of harm being done
19 or the potential socio-economic effect. That is an
20 evaluation you have to make in the context of a
21 particular situation.

22 We do, as we have pointed out in the
23 evidence, make reference to specific minimum
24 information requirements in the context of, for
25 example, the fish guidelines, they are implicit in the

1 moose guidelines, but we haven't done so in other cases
2 simply because I think that you can appreciate that the
3 needs of, for example, if you are talking about
4 communities are quite variable, the potential effects
5 are quite variable and they have to be assessed in the
6 local context by people who are familiar with the area.

7 Q. Okay. So the key ingredients are
8 local information and assessed by people in the local
9 area?

10 A. And having a sense of what the
11 potential effects are so that you can determine the
12 adequacy of the data that you have or should have.

13 Q. And who makes that decision, sir?

14 A. Well, in the context of timber
15 management planning, the decision is made by the
16 planning team. It isn't made in isolation, though, it
17 is made on the basis of the planning process that we
18 outline in the Class EA.

19 And, as we discussed in the document and
20 have been discussed, we, as a preliminary step in that
21 process, consolidate background information. We then
22 go through a process of public notice and we hold an
23 information house that enables us hopefully to get in
24 touch with the appropriate parties who may be affected,
25 who can either verify our information or provide us

1 with new information. But the planning team makes that
2 decision initially.

3 Q. And that is principally MNR
4 personnel; is that correct?

5 A. That's correct, in consultation with
6 affected parties.

7 Q. Let's touch back on that and let's go
8 over to your evidence on 8845 -- sorry, let's start at
9 8844. Let's look at line 21, 22, 23:

10 "You are living in a relatively small
11 community, I can assure you that most
12 people knew who I was and it was not
13 necessarily because I initially went out
14 of my way to find that out, but simply
15 that you do exert a significant influence
16 on people and their lives."

17 What is the nature of that influence you
18 exert?

19 A. Well, I think, as I pointed out in
20 that evidence, the influence is -- occurs as a direct
21 result of MNR's mandate to manage Crown land and
22 resources. And because of that particular mandate, we
23 are involved in a very substantial way in the
24 disposition of resources, whether that be the sale of
25 Crown land or the issuance of permits.

1 We obviously have a strong enforcement
2 mandate and, because of that, we affect virtually all
3 users of Crown land and I think that what I was simply
4 saying is that people very quickly become aware of that
5 and it is not necessarily in a negative way, I might
6 add, it is just --

7 Q. But potentially in a very powerful
8 way?

9 A. Yes.

10 Q. And the nature of your
11 accountability, is it based upon this informal system?

12 A. Well, no. I think the informal
13 system is an important one and it is one that we have
14 gone to some pains to stress here because we think it
15 is important. But, at the same time, I think in my
16 evidence I stress the institutionalized framework
17 within which most of our decisions, if not all of our
18 decisions, are made. In timber management, it is the
19 timber management planning framework that provides for
20 opportunities for the public to make input, places a
21 significant requirement on us to document and explain
22 our decisions.

23 Q. I am intrigued by your comments at
24 8845 where you say:

25 "For example, I had two neighbours who

1 lived directly across the street from me
2 who were tourist operators. I was their
3 neighbour, but I was also the district
4 manager and I was the guy who had some
5 kind of control over what happened and
6 obviously could have some effect on their
7 livelihood."

8 Why should we or why should my clients
9 take any comfort from the fact that you have an
10 extraordinary administrative discretion and
11 extraordinary authority to affect their lives without
12 some of the countervailing systems that affect
13 bureaucracies in other parts of the province?

14 A. Well, I think that was really the
15 point of much of my evidence. I am not so sure that
16 the discretion was quite as extraordinary as you are
17 suggesting here.

18 I think the point that I made on a number
19 of occasions was that in the Ministry as a whole,
20 because we are decentralized, we put a very, very
21 strong emphasis on achieving a balance between the
22 exercise of professional judgment in decision-making
23 and, at the same time, providing corporate direction.

24 And, in that context, rather than saying
25 I had an extreme discretion in terms of being able to

1 make decisions, I certainly had some, but it was
2 bounded in a very significant way, as I say, by a
3 variety of pre-existing obligations by, if you want,
4 institutionalized planning frameworks that provided
5 very explicit direction in terms of how I had to
6 conduct the enterprise, for example, of timber
7 management in the context of the various groups that
8 are affected.

9 So that I didn't feel for one moment that
10 I was -- while ultimately the decisions that I was
11 responsible for affected people in a significant way,
12 the mechanisms that are in place provide ample
13 opportunity, I would suggest, for people to be involved
14 in the process and in instances where they take
15 exception to the decisions that are being made to, in
16 effect, appeal them.

17 Q. Who do they appeal them to?

18 A. Well, they can appeal through the
19 process, first of all. And, you know, I keep going
20 back, back, back to the timber management planning
21 process because that is the context within which we do
22 this.

23 The first level, of course, is that we
24 ask them to participate, we provide them with our
25 understanding of what the information is and we ask

1 them to verify it and provide new information. And
2 basically that's the first step in the process.

3 And as it was pointed out there are four
4 additional opportunities when the public, if you want,
5 has an opportunity or specific stakeholder groups to
6 involve themselves in the development of that plan.

7 Q. So the checks and balance in the
8 system then really fundamentally hinge upon the
9 effectiveness of those stages in the planning process,
10 those public consultation -- the stages of public
11 consultation; is that right?

12 A. Very much so.

13 Q. So there is no other effective
14 control on you?

15 MR. PYZER: A. Mr. Hunter, I can
16 certainly think of some others, if you are interested.

17 Obviously, any district manager, when he
18 makes a decision or has rendered a decision regardless
19 of the issue, that decision can be appealed to the
20 regional director. If you don't like the regional
21 direction's decision, it can be appealed to the
22 Assistant Deputy Minister for northern Ontario.

23 If you don't like his decision, it can be
24 appealed to the Deputy Minister; if you don't like his
25 decision, it can be appealed to the Minister; if you

1 don't like his decision, it can be appealed to Cabinet;
2 and if you don't like their decision, you can appeal it
3 to the Premier, you can take it to your local member of
4 parliament, you can -- so there are many opportunities
5 available.

6 I just don't want to leave you with the
7 feeling that a district manager, because we are not
8 paid enough to make every decision at the level that
9 you think we are. Certainly there is a large level of
10 bureacracy above us and I, for one, am very sensitive
11 to Ministers' letters talking about potential decisions
12 that may be made in Kenora, as an example.

13 Q. Mr. Pyzer, it seems to me that what
14 you and Mr. Clark are really saying: Look, you have
15 got to trust us because we are on the ground, we know
16 the people, and I am just asking why?

17 A. Well, I can give you two good reasons
18 from personal experience, and one I had the pleasure
19 about a year ago of going to Whitedog Indian Reserve,
20 and when Whitedog opened the tree nursery at Whitedog
21 they specifically did not invite a local newspaper from
22 Kenora, they invited very few other government
23 ministries, but they invited the Ministry of Natural
24 Resources at the local, district and regional level in
25 masse, if you will.

1 We were asked to smoke the peace pipe
2 with them and I believe this was all video-taped; in
3 fact, it would be something the Board may be interested
4 in getting a copy. And when Chief Anthony Henry got up
5 on the stand at the end to accept the greenhouse that
6 we had built for them, he indicated to all assembled,
7 and that was the full community of Whitedog Indian
8 Reserve - they had a traditional feast - and Chief
9 Henry said the one thing that really bothered him the
10 most was that in terms of all other government
11 ministries, both federal and provincial, and the
12 average man on the street in northern Ontario, his one
13 own great concern was that no one understood him, his
14 people, their problems and issues as well as the
15 Ministry of Natural Resources did.

16 Q. You mean they didn't understand MNR
17 or MNR didn't understand the Indians?

18 A. No. You take a look at that -- we
19 took that with great pride and there was absolutely no
20 question but what he was saying, is that we understood
21 them extremely well and he was very pleased with the
22 relationship.

23 The second example I would like to give
24 you is Grassy Narrows where this past year we just
25 opened the marina that we have worked three to five

1 years intensively with Grassy Narrows Indian Reserve.
2 Steve Forbister, the Chief of Grassy, personally told
3 me that he did not invite the Premier of Ontario to cut
4 the ribbon, he didn't invite the Minister of Natural
5 Resources. Again, there were very few other assembled
6 ministries there, but the district office was invited
7 again in large numbers and I consider it a personal
8 honour that Steve asked me particularly to cut that
9 ribbon for that marina.

10 And I think that is just two examples, at
11 least in my district, where despite some of what you
12 read in the press isn't necessarily what's happening at
13 the local, district level in terms of delivering the
14 product, if you will.

15 MR. CLARK: A. Mr. Hunter, I would like
16 to come back to that a little bit because I think you
17 initiated this with me, and it has to do with the
18 discretion of the district manager.

19 And I don't want to drop that, because
20 your words were that he has extraordinary powers; they
21 certainly weren't my words. We do have a significant
22 influence and I think that's generally appreciated, but
23 I think the point we are making here is that that
24 influence is bounded and directed by a great deal of
25 corporate direction.

1 And, in the context of timber management
2 planning, as I say, there is the formalized process,
3 and a significant part of that is the review and
4 approval process. The plans aren't simply written and
5 then stuck on a shelf, there is a very -- there is a
6 process that we go through that involves a detailed
7 review and approval, it happens at the district level,
8 it then goes to the region for review and approval and
9 then to main office.

10 So it isn't a decision that's made
11 lightly and it isn't a decision that is made on an
12 independent bases at the district level. A final plan
13 has gone through a great deal of approval.

14 In addition to that, the one other point
15 I would want to stress in this context is that there is
16 a commitment or a requirement to document the basis on
17 which decisions are made and to document the
18 alternatives that are looked at. So that significant
19 decisions that are made in the context of that plan are
20 documented.

21 So two really important points here: One
22 is the information and the decisions that we made are
23 well documented; and, secondly, there is very
24 substantial involvement of the public, or certainly the
25 the opportunity exists for that involvement; and,

1 thirdly, there is a review and approval process that
2 occurs at least three levels, the district, the region
3 and main office.

4 Q. That's fine. I think, Mr. Clark,
5 perhaps we will come back to some of that when we
6 discuss the question of district guidelines, but I
7 would like to go to a point that Mr. Pyzer raised.

8 Mr. Pyzer, in Panel 1, I asked Mr. Monzon
9 if he was aware of the fact that it was at that time I
10 believe - it seemed like a long time ago - but I think
11 roughly a year ago, it was the first time in the Sioux
12 Lookout District area that MNR and my clients had ever
13 met.

14 And I asked Mr. Monzon at that time: Did
15 it surprise him, and would he just simply take that
16 subject to check. Would it surprise you that that had
17 occurred?

18 MR. PYZER: A. Yes, it would.

19 Q. It would. Okay.

20 A. If that's true.

21 Q. Well, certainly to the best of my
22 knowledge it is true, because I was there.

23 A. I am sorry, you were where?

24 Q. I was at the meeting.

25 Now, let me ask you: Help me, because at

1 the final day when we stand before the Board and argue,
2 are you familiar with the statement made by Mr. Fox
3 before this Board which was in Panel -- Volume 3,
4 Wednesday, February the 3rd?

5 A. No, I guarantee you I am not.

6 Q. You are not. Well, I think - I am
7 not asking you to appreciate and certainly not to
8 understand, but accept the fact that Mr. Fox said:

9 "Ladies and gentlemen of the Board, there
10 is no love lost between the Indian people
11 of our council area..."

12 And I reflected the words very carefully:

13 "...of our council area and the
14 governments of this country. The
15 animosity has been generated over the
16 years from our forest treaty signing
17 in 1929-30 to present day land use
18 planning guidelines by the Ministry of
19 Natural Resources has proven to be
20 detrimental to the Indian people of
21 northern Ontario. If the future of
22 resource development in northern Ontario
23 is to happen, it should happen through
24 a mutual planning process involving the
25 Indian and non-Indian people of northern

1 Ontario. It should not be dictated by a
2 government agency, least of all by the
3 Ministry of Natural Resources."

4 Do you feel that Mr. Forbister or other
5 chiefs in the Treaty 3 areas would disagree with my
6 client's perception of the relationship between native
7 people and the Ministry of Natural Resources?

8 A. Actually in what you were reading
9 there, I didn't actually hear you say Ministry of
10 Natural Resources, I heard you talking about the
11 government. Correct me if I am wrong.

12 The relationship between Indians and
13 governments of...

14 Q. No, I will do it again then just to
15 make sure.

16 "...The animosity has been generated over
17 the years from our forest treaty signing
18 in 1929-30 to the present day land use
19 planning guidelines by the Ministry of
20 Natural Resources has proven to be
21 detrimental to the Indian people of
22 northern Ontario."

23 The next paragraph:

24 "If the future of resource development in
25 northern Ontario is to happen, it should

1 happen through a mutual planning process
2 involving the Indian and non-Indian
3 people of northern Ontario. It should
4 not be dictated by a government agency,
5 least of all by the Ministry of Natural
6 Resources."

7 A. No, I would agree with the vast
8 majority of that, having spent eight to ten years
9 working on the West Patricia Land Use Guidelines.

10 We documented and that's why I have
11 great -- you know, I can go back on those files, but my
12 feeling is that the Ministry has spent a lot of time
13 with all of those reserves in northern Ontario.

14 When you say your clients, I am not sure
15 who your clients are in that context, but certainly in
16 terms of the Sioux Lookout District dealing with local
17 Indian bands, I would wager right now that they are in
18 there several times in the course of a year and there
19 is lots of correspondence going back between those two
20 offices.

21 People like Cam Currie and Doug Sayers,
22 that was their sole job, to be flying north into all
23 those communities in terms of traplines, all of the
24 inventory work that was going on up there.

25 In terms of the West Patricia Land Use

1 Guidelines, we kept a specific person on staff
2 monitoring and keeping track of every piece of
3 correspondence, every request to get involved on a
4 daily basis and I think the binder, I believe Mr.
5 Monzon and Douglas entered that as evidence, but I
6 believe the binder is thick and I can personally recall
7 receiving letters back saying: You are flooding us
8 with information and data. We just don't want to get
9 involved in this exercise.

10 Now, from a political perspective, I can
11 understand that, but I can only say that as a land use
12 planner that was involved in coordinating that
13 exercise, my staff and the people that were trying to
14 put that land use plan together, bent over backwards to
15 get Indian people involved. Now, there may have been a
16 higher agenda why they chose not to, in fact, we
17 discussed that with Mr. Fahlgren right in Thunder Bay
18 around the corner with the Indian people that you
19 represent at those meetings.

20 I prepared a Cabinet submission talking
21 about all of these efforts that we have gone to and yet
22 the Indian people were choosing not to take advantage
23 of them.

24 So, yes, it was not as good as we
25 certainly would have liked it and in terms of

1 cooperative resource management, cooperative land use
2 planning, I agree one hundred per cent with those
3 statements and I believe that's the point the Ministry
4 has been making for a decade now. I believe the
5 Ministry is honestly trying to do the very same thing.

6 Q. Ministry of Natural Resources?

7 A. That's correct.

8 Q. Are you familiar with the Dona Lake
9 agreement?

10 A. I am not.

11 Q. Are you familiar with the Golden
12 Patricia agreement?

13 A. No.

14 MR. HUNTER: Perhaps, Mr. Chairman, I can
15 enter these as evidence now.

16 MR. FREIDIN: What's Mr. Hunter filing?

17 MR. HUNTER: Agreements between my client
18 and the Province of Ontario with respect to resource
19 agreements. (handed)

20 THE CHAIRMAN: Thank you.

21 Very well, Mr. Hunter, the first
22 agreement will be an agreement Dome Exploration Canada
23 Limited and a number of other parties with the Province
24 of Ontario and the Government of Canada.

25 MR. HUNTER: I think there is no

1 signature page on -- the Golden Patricia agreement does
2 have a signature page. The other one was signed as
3 well by ministries.

4 THE CHAIRMAN: Well, how are we going to
5 title these, the first one I just referred to?

6 MR. HUNTER: Resource agreements. Well,
7 we have already referred to the Dome Exploration one as
8 the Dona Lake Agreement.

9 THE CHAIRMAN: Dona?

10 MR. HUNTER: Dona Lake Agreement.

11 THE CHAIRMAN: All right. That will be
12 Exhibit 370.

13 ---EXHIBIT NO. 370: Dona Lake Agreement.

14 MR. HUNTER: Yes. And the other one will
15 be -- we have referred to it as the Golden Patricia
16 Agreement. And, Mr. Chairman, I do not intend to spend
17 a great deal of time, just a few questions just to
18 introduce this into evidence.

19 My friend is aware of it and we will be
20 referring to these agreements throughout a substantial
21 portion of our ensuing cross-examination and we will be
22 dealing with these when we lead evidence as well.

23 THE CHAIRMAN: The Golden Patricia
24 Agreement will be Exhibit 371.

25 ---EXHIBIT NO. 371: Golden Patricia Agreement.

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MR. FREIDIN: Are you going to ask
questions of the witness?

MR. HUNTER: Yes. Do you want to give
them the copy.

MR. FREIDIN: Do you want to give a copy
to us.

MR. HUNTER: (handed).

MR. FREIDIN: Do you want to give a copy
to Mr. Clark.

MR. HUNTER: (handed)

Mr. Chairman, at the risk of my friend
not wanting me to lead evidence, I will make a very few
brief comments.

These were both agreements which were
negotiated between my client, industry and with the
provincial government and the federal government. You
may recall, Mr. Chairman, in my cross-examination of
Mr. Crystal, I repeatedly asked him as to whether or
not the Ministry of Natural Resources had been a
signatory to any substantial agreements in the
Nishnawbe area and I think you will recall his evidence
was no.

Q. So, Mr. Pyzer, you are not familiar
with these resource agreements?

1 MR. PYZER: A. No, I am not.

2 Q. I see. Perhaps simply for the -- do
3 they surprise you, by the way. I mean, does it surprise
4 you that communities in the Windigo area and NAN were
5 able to negotiate resource agreements with the Province
6 of Ontario, given the fact that they did not have a
7 particular happy history with MNR over the last ten
8 years?

9 A. Does it surprise me they came to an
10 agreement? No.

11 Q. Okay. I draw your attention to the
12 Golden Patricia Agreement and to the signatory page?

13 A. Sorry, it is the Golden Patricia, St.
14 Joe Canada?

15 Q. Yes, it is. St. Joe, Exhibit 371. I
16 draw your attention to page 38 of that agreement and
17 would you identify for the Board who the signatories
18 were for the Province of Ontario?

19 A. You are asking me to read off who
20 these people are.

21 Q. Yes, if you would, please?

22 A. There were a number of chiefs.

23 Q. No, just in relationship to Ontario
24 and on behalf of Ontario by...?

25 A. Yes, the Minister of Northern

1 Development, the Minister of Mines and the minister
2 responsible for native affairs.

3 Q. Are you aware as to whether or not
4 the Ministry of Natural Resources was involved in these
5 negotiations?

6 A. No, I don't know whether they were or
7 weren't.

8 Q. I see. I draw your attention, if I
9 might - and this is in relationship to a matter which
10 you raised in your evidence and I believe - correct me
11 if I am wrong - Mr. Clark might have, with respect to
12 Lac Seul Management Agreement and to the Slate Falls
13 Band and I will come back to that at a later point in
14 time.

15 MR. HUNTER: Mr. Chairman, I don't intend
16 to go through this whole document at this stage. As I
17 indicated to you previously, my friend now has it, this
18 is a public document, this has been around for -- well,
19 close to a year. Dona Lake has been around for a great
20 more than a year.

21 I might indicate to you, sir, that we are
22 presently involved in negotiations on something called
23 Muscle White which is again in the Windigo area and we
24 will probably be presenting evidence in relationship to
25 that at a later point in time.

1 Q. Mr. Pyzer, perhaps I could draw your
2 attention to page 22 and ask you to look at Sections
3 10(6)(a).

4 THE CHAIRMAN: Which agreement?

5 MR. HUNTER: Golden Patricia, Exhibit
6 371.

7 Q. In particular, sir, I would ask you
8 to look at Section 10(6)(c) and 10(6)(d) and 10(6)(e).

9 THE CHAIRMAN: Mr. Hunter, it is almost
10 time for the afternoon break. Would it be convenient
11 if Mr. Pyzer looked at this over the break and came
12 back.

13 MR. HUNTER: Sure. Thank you, Mr.
14 Chairman.

15 THE CHAIRMAN: We will adjourn for 20
16 minutes.

17 ---Recess taken at 2:33 p.m.

18 ---Upon resuming at 3:00 p.m.

19 THE CHAIRMAN: Thank you. Be seated,
20 please.

21 MR. HUNTER: Mr. Chairman, I hope not to
22 bore you any longer and hopefully I will just another
23 enough half an hour in cross-examination. Everybody
24 seems to have settled into a very quiet mode or
25 something.

1 THE CHAIRMAN: Well, it may be a quiet
2 mode, but do not think for a moment that the Board is
3 board. The Board does not get bored with any of the
4 evidence. It may have other opinions on some of the
5 evidence, but boredom is not one of them.

6 MR. HUNTER: Q. Mr. Pyzer, if I could
7 ask you to turn to Exhibit 288 which is Question 7.
8 Panel 7, Question 7 being Exhibit 288. Do you adopt
9 this answer, sir, as your evidence?

10 THE CHAIRMAN: You are not going back at
11 that agreement?

12 MR. HUNTER: Oh I am, sir.

13 THE CHAIRMAN: Oh you are.

14 MR. HUNTER: Oh yes, I will be.

15 THE CHAIRMAN: Okay.

16 MR. HUNTER: Oh yes. I want to try to
17 set the context, sir.

18 THE CHAIRMAN: Very well.

19 MR. HUNTER: Q. Mr. Pyzer, just to
20 clarify a couple of points. Perhaps we can look first
21 at the answer to -- sorry, I didn't hear your answer, I
22 apologize.

23 Did you prepare this response, sir?

24 MR. PYZER: A. Yes, that's correct.

25 Q. And you adopt this as your evidence?

1 A. Yes.

2 Q. Thank you. And I just want to very
3 quickly go through the Item 2, communities' social and
4 economic development programs.

5 A. Yes.

6 Q. And I would simply ask you to
7 identify in the body of that agreement -- sorry, that
8 paragraph, being paragraph 2.

9 A. The one that starts: "Also...?"

10 Q. That's correct, yes. Which of those
11 communities are within Nishnawbe-Aski Nation? I can
12 give you that answer, but I prefer that it come from
13 you, if I might.

14 A. Yes. Mr. Hunter I have read that,
15 paragraph 2 and your question is...?

16 Q. The answer is...?

17 A. No, I am sorry, I have read --

18 Q. The question is: Which are
19 communities within NAN, Nishnawbe-Aski Nation?

20 A. I am sorry, I don't see other than
21 Whitedog, I referenced the Whitedog Agreement here.

22 Q. Whitedog I believe is Treaty 3?

23 A. That's correct.

24 Q. Well, let's do them one by one.

25 A. Yes.

1 Q. Kiaski?

2 A. Oh, I see what you are sayihng. I
3 was just reading paragraph 2, I am sorry. You are down
4 now to paragraph...?

5 Q. Okay. Item 2, communities' social
6 and economic development. Kiaski is where, sir?

7 A. It is in Nipigon District.

8 Q. Robinson/Superior; is that right?

9 A. I believe that's correct.

10 Q. White Sands?

11 A. I believe that is the same.

12 Q. Kilkenny?

13 A. Yes, they are all in the Nipigon
14 district.

15 Q. Nipigon area. Lac Seul?

16 A. Lac Seul would be Treaty 9,
17 Nishnawbe-Aski.

18 Q. I believe it is Treaty 3, sir, but
19 you can take that subject to check, if you would. If
20 Hearst. If you don't know, I can simply help you there
21 if you don't know.

22 A. Sure, you help me.

23 Q. Okay. Then I believe Constance Lake
24 and Metagami are the only two within NAN the rest are
25 principally in Treaty 3 and Robinson/Huron --

1 Robinson/Superior.

2 If I can go back to Answer 1 and at the
3 bottom of the third paragraph the last paragraph, on
4 that page, for example:

5 "In the Sioux Lookout District a review
6 of Land Branch records revealed that
7 Slate Falls Indian reserve..."

8 Firstly, are you familiar as to whether
9 or not Slate Falls is an Indian reserve?

10 A. No, I have taken this information
11 directly from Sioux Lookout's response.

12 Q. Well, would you accept, sir, subject
13 to check, that Slate Falls is not a reserve?

14 A. I think that was the point we were
15 probably making -- they were making here, that it is
16 not a reserve. That's why the four square miles of
17 wandering land, if you will, has been pulled out of the
18 FMA agreement to be identified at some future date.

19 Q. Okay. Now, you previously stated
20 that you were not aware of the St. Joe Agreement. When
21 you contacted the district office --

22 MR. FREIDIN: St. Joe being the Golden
23 Patricia?

24 MR. HUNTER: I apologize. Yes, the
25 Golden Patricia.

1 Q. When you contacted the Sioux Lookout
2 office, did they mention to you the existence of the
3 Golden Patricia Agreement?

4 MR. PYZER: A. No, they didn't.

5 Q. Okay. Can I draw your attention
6 then, sir, to page 22, Items 10(6)(c).

7 A. Yes, I have that.

8 Q. And you have that. If you go down to
9 the bottom of that paragraph, I believe it states:

10 "Such an agreement shall include a
11 minimum of four square miles south of
12 North Bamaji Lake and may include
13 additional acreage north of North Bamaji
14 Lake."

15 And Section 10(6)(d) states:

16 "The council and the Slate Falls Band
17 shall conduct a study to identify
18 the impacts of access on the timber
19 management provisions of the Lac Seul
20 timber management plan in the area
21 referred to under the agreement mentioned
22 in Section 10(6)(c)."

23 I gather, sir, that that information was
24 not conveyed to you by the district office; is that
25 correct, when you prepared your evidence?

1 A. Well, the reference to the four
2 square mile I believe is the very same reference which
3 I made which they gave me.

4 The fact that Band would conduct a study
5 to identify impacts of access and timber management on
6 the plan, would be something that we would hope any
7 Indian reserve in Ontario would do as part of the
8 normal planning process.

9 Q. So, therefore, it is fair to say
10 though that the reference to the four square mile --
11 where did the impetus for the four square miles come
12 from? What mechanism was on the ground to ensure that
13 that community would obtain some degree of
14 protection -- or sorry, would obtain a minimum of four
15 square miles?

16 A. Again, all I know about this in terms
17 of the Slate Falls Reserve or should be -- will be a
18 reserve is that an area was pulled out of the FMA, not
19 the timber management plan, but the original forest
20 management agreement, that an area of four square miles
21 would be identified at some future date for the
22 reserve.

23 And I assume that this is an another step
24 forward to identifying where that land will be.

25 Q. So you don't know whether or not this

1 particular document was the reason for why the four
2 square miles?

3 A. No, I don't.

4 Q. Okay. Thank you. If I might draw
5 your attention, sir, to Section 7, sub 5(a) and rather
6 than my reading it perhaps, Mr. Pyzer, you can take a
7 look at that and I would simply put two questions to
8 you:

9 Page 19, Section 7(5)(a) and I would ask
10 for your speculation as to why the Province of Ontario,
11 through three Cabinet Ministers agreed to the
12 provisions that are there and whether or not you
13 personally would have any objection to such provisions
14 being in an approved Class Assessment for Timber
15 Management?

16 MR. PYZER: A. And your question again
17 is...?

18 Q. My question is -- well, forget the
19 first question. The second question is: Would you
20 have any personal objection to terms and conditions
21 such as those found in Section 7(5)(a) being
22 incorporated into an approved Class Assessment for
23 Timber Management?

24 A. You know, reading one small section
25 out of here, I hesitate, not having read the whole

1 document. My understanding of this is that this was a
2 site-specific mining program or project and these are
3 some agreements that have resulted from that.

4 From a general sense, I can tell you that
5 even within my own district in Kenora, within the
6 Grassy Narrows traditional land use area, we are doing
7 this (5)(a). I do notify them of any land dispositions
8 that we are making in advance of making those
9 dispositions.

10 And I can tell you that we are the only
11 Ministry in Kenora District that does that. No other
12 Ministry does that.

13 Q. No other ministry does that?

14 A. No, they don't.

15 THE CHAIRMAN: But what was your answer
16 to the specific question, would you agree...

17 MR. PYZER: Again, not having read the
18 whole document and not really knowing what it means in
19 terms of the site-specific issues and where something
20 is being negotiated like a Grassy Narrows agreement, or
21 a Whitedog agreement or something that looks to be the
22 same here, in that context I wouldn't have a problem
23 with it.

24 MR. HUNTER: Q. I am intrigued by your
25 answer to the fact that other Ministries do not have

1 recognized processes for informing native people and I
2 would ask you to look at Section 7(5)(d).

3 A. Sorry. I didn't say they didn't have
4 processes, I am saying that in terms of the Grassy
5 Narrows traditional land use area we are the only
6 Ministry, to my understanding, that notifies them as a
7 matter of course on any land disposition.

8 Q. That was the context in which I was
9 asking the question.

10 A. Okay, yes.

11 Q. I would ask you to look at Section
12 7(5)(b)?

13 A. Sub (b)?

14 Q. (b) on the bottom of page 19 and top
15 of page 20.

16 A. I see.

17 Q. And ask you whether, in your personal
18 opinion you have any problems with that provision?

19 A. Now, reading it in this -- you know,
20 looking at it right now for the very first time and
21 simply reading six lines out of a thick document, I
22 have no problem.

23 MR. HUNTER: Well, you will have full
24 opportunity later and I have indicated to my friend
25 that I won't undertake - because we don't all know

1 where we are going to be tomorrow - but on the
2 assumption that we are still able to participate, I
3 have indicated to Mr. Freidin that we will be bringing
4 evidence in relationship to these agreements and that
5 we would be presumably asking the Board to subpoena
6 the government negotiators with respect to these
7 matters.

8 THE CHAIRMAN: We shall look forward to
9 your request.

10 MR. HUNTER: Request. Thank you, Mr.
11 Chairman.

12 MR. PYZER: In fact I guess, Mr. Hunter,
13 I would go so far as to say that, yes, having read it a
14 second time that I would support that, primarily
15 because it binds both parties and, from my experience
16 to date, I believe that the efforts have been made and
17 the fact that this is probably binding both sides is
18 quite healthy.

19 MR. HUNTER: Q. Excuse me, Mr. Pyzer.

20 Would you be familiar, sir, as to the
21 number of communities in NAN that do not have reserve
22 status?

23 MR. PYZER: A. No, I don't know that.

24 Q. Okay, thank you.

25 A. I know that a sizable number are

1 outside the area of the undertaking, but I don't know
2 how many are reserves or not reserves.

3 MR. HUNTER: Would you bear with me, Mr.
4 Chairman, while I just move a few more pieces of paper
5 around. I am trying to find Mr. Pyzer's evidence with
6 respect to fishing. I believe it is at 9058.

7 Q. Mr. Pyzer, as I understand it, there
8 is -- let me just bear with you until you get it.
9 Volume 53, November 3rd, 1988.

10 MR. PYZER: A. Which page, I am sorry?

11 Q. 9058.

12 A. 90 -- I don't believe that I have
13 that here.

14 MR. FREIDIN: Volume 53. Do you have the
15 right volume, Mr. Pyzer?

16 MR. PYZER: Yes, but I don't have that
17 volume.

18 MR. FREIDIN: There is one coming down
19 (handed)

20 MR. PYZER: Yes, 9053?

21 MR. HUNTER: Q. No, 9058.

22 A. 58?

23 Q. Yes.

24 A. Yes.

25 Q. And your evidence was in relationship

1 to the fish management plan. Now, I would like you to
2 help the Board on this matter.

3 I believe that in northwest Ontario there
4 is something referred to as the Fish Advisory
5 Committee; is that correct, chaired by Terry Platana.

6 A. Yes.

7 Q. Is that correct?

8 A. Yes, that's correct.

9 Q. And what is that body?

10 A. In all honesty I don't know very much
11 about it. I can tell you what I believe it is and that
12 is that I - and I may be totally wrong here - do you
13 want me to speculate as to what it is?

14 Q. Well, perhaps some other member of
15 the panel can help me there.

16 THE CHAIRMAN: Mr. Ward, do you happen to
17 know what that committee is?

18 MR. WARD: I believe it is a group of
19 members, 16 members representing the different interest
20 groups in northwestern Ontario that are putting
21 together a position for the Ontario Government on
22 basically reflecting the views of northwestern Ontario
23 residents about the upcoming or proposed Indian fishing
24 agreement.

25 MR. HUNTER: Q. Thank you, Mr. Ward.

1 MR. PYZER: A. That much I did know.

2 Q. And who is this committee reporting
3 to? Are you familiar with that, sir?

4 MR. WARD: A. No, I am not too sure but
5 I believe it is...

6 Q. So you do not know if it is reporting
7 to the Ministry of Natural Resources? Do you know who
8 this committee is reporting to, Mr. Pyzer?

9 MR. PYZER: A. No, I don't. I suspect
10 it is the Minister. I suspect the Minister would see
11 it and certainly be a part of that. But, again, if I
12 was speculating I would say, yes, it is to the Minister
13 of Natural Resources.

14 Although, now that I do think about it,
15 possibly also the Minister of Northern Development and
16 Mines.

17 Q. That is close.

18 A. Northern Development.

19 Q. Yes, that's right. Is there any
20 native representation on that committee?

21 A. No. In fact, again, my understanding
22 is that because the Indian organizations put forward
23 their position that sparked a reaction from non-Indian
24 people and that the position was that Ontario was
25 negotiating directly with Indian people without

1 involving local residents that the Minister said -- or
2 the Ministers or Cabinet indicated that they would form
3 a committee and let this group put a position paper
4 together similar to that of the Indian people.

5 Q. Okay. You refer at page 9380 -- if
6 you will bear with me -- sorry, 9360, Volume 55,
7 November 7.

8 A. 9360, yes.

9 Q. All right. 9630 you refer to the
10 Nelson Quarry operation.

11 A. Yes.

12 Q. Was your Ministry the lead negotiator
13 in those negotiations?

14 A. Well, that is an interesting question
15 and I am kind of glad you asked it.

16 Q. I am sure you are.

17 A. Well, we are not the Ministry
18 responsible for mining. And the Ministry, because they
19 had little involvement with Grassy Narrows and we had
20 such significant involvement, because they did not know
21 the ropes, if you will, we were asked to facilitate and
22 to assist both the band and the other ministries in
23 coming to a resolution on that issue.

24 So we perform more of a
25 facilitator/advisor role, again because we have no

1 mandate, we are not the Ministry of Mines and it is a
2 mining issue.

3 Q. But it is a land issue; isn't it? I
4 mean, you are talking about impacts and effects upon
5 Crown land, traditional -- from the MNR's perspective
6 Crown land and from the native perspective traditional
7 land.

8 A. But you asked...

9 Q. Why wasn't MNR involved in the
10 negotiations?

11 A. Well, again, we were involved. I am
12 saying that you asked if we were the lead agency and we
13 were not the lead agency because the Ministry of Mines
14 and the Mining Act --

15 Q. I see.

16 A. The Mining Act indicates that if one
17 stakes a claim and follows the process in the Mining
18 Act there are certain things that result from that.
19 And we are not the ministry that administers the Mining
20 Act in the province.

21 To the extent that natural resources
22 could have been impacted upon, and to the extent that
23 we could offer our services to those other ministries,
24 we certainly did that and we were involved
25 significantly in that exercise.

1 Q. Was that throughout the whole course
2 of the negotiations?

3 A. That's correct.

4 Q. Mm-hmm. And I am curious as to the
5 role as a facilitator. If I draw your attention
6 specifically, and it is only by way of an example,
7 again to the Golden Patricia agreement, you will notice
8 at the bottom of the page the style: Professor Allan
9 Grant facilitator, Osgoode Hall Law School.

10 Are you familiar with the role that
11 Professor Grant has played in --

12 A. No.

13 Q. --mediating resource agreements?

14 A. No.

15 Q. Facilitating them? All right, I see.
16 But you would describe your role as that of a
17 facilitator?

18 A. Absolutely.

19 Q. Did you chair the meetings?

20 A. Some, yes.

21 Q. You retained control over the
22 minutes; is that correct?

23 A. No. What we did was there were joint
24 minutes that were circulated amongst all those in
25 attendance and all of those minutes were recorded and

1 approved, if you will, by the various people that were
2 there.

3 Q. Was there any permitting requirements
4 on your part with respect to these negotiations; did
5 MNR have to give approval to any permits?

6 A. No, the only permit approval would be
7 a work permit under the Forest Fire Prevention Act
8 which is a very straightforward -- during the fire
9 season, to conduct an operation within so many feet,
10 300 feet of forested land. Nothing in terms of a major
11 disposition, if you will. That was a Mining Act
12 disposition.

13 Q. Okay. So there is a substantial
14 number of other bodies involved in resource planning in
15 the north; is that correct?

16 A. Well, there certainly are other
17 bodies, other agencies.

18 Q. And how would you differentiate your
19 responsibility from that of the Ministry of Mines and
20 which is the most -- where does your real
21 responsibilities lie as distinct from the Ministry of
22 Mines in terms of negotiating with Indian communities?

23 A. You know, in terms of negotiating
24 with Indian communities, are you talking about, like --
25 when I negotiate with Indian communities over things

1 like fisheries management plans, not land negotiations,
2 if you will, or major issues like that.

3 So within that context, where it starts
4 and where the other ministry stops is according to the
5 Acts which we administer. Ministry of Northern
6 Development and Mines has the Mining Act, so clearly
7 they are the lead on mining-related issues.

8 We administer things like the Crown
9 Timber Act, the Provincial Parks Act and Public Lands
10 Act, Forest Fire Prevention Act, Navigable Lakes and
11 Rivers, those sorts of things.

12 So where we deal with Indian communities
13 or any community, any individual that could be affected
14 by any of those acts that we administer, we obviously
15 have lead responsibility.

16 Q. So where its your legislation you
17 presume the lead responsibility; is that correct?

18 A. That's correct.

19 Q. And does that apply with respect to
20 land claims as well?

21 A. Again, I am talking from my
22 perspective as the district manager and the work that I
23 do. I am really not qualified to speak in terms of
24 land claims.

25 Q. Okay. So that is not a matter which

1 comes through your operation then?

2 A. Not in terms of the negotiations of
3 those claims, no. We may be asked for small pieces of
4 information, or to provide a piece of data, something
5 like that routinely, but not in the negotiations.

6 Q. Thank you.

7 MR. HUNTER: Mr. Chairman, I am just
8 trying to -- I don't really have a large number of
9 questions left for Mr. Pyzer, but I do have a few for
10 Mr. Clark. So I may come back, sir. Just bear with
11 me.

12 Q. Mr. Clark, perhaps we can go back to
13 your testimony in Volume 52, and I just really want to
14 set the context and I would ask you to turn to 8792.
15 Okay, sir?

16 MR. CLARK: A. Yes.

17 Q. Thank you. And you say this at a few
18 points throughout the course of your testimony -- your
19 evidence and I am going to try to simply ask you
20 questions about this statement in response to this
21 particular page, but we may get carried over into other
22 pages.

23 And you state here:

24 "And I think what I am simply pointing
25 out here is that you don't start out in

1 this process knowing what your minimum
2 requirements are. There is no cook book
3 here. There is no simple way of sitting
4 down and coming up with a nice tidy list
5 of all the things that you should have in
6 order to make the decision...."

7 And I want to understand what it is that
8 you mean by cook books. For example, is the Hydro
9 Class Assessment, which is Exhibit -- well, first of
10 all, are you familiar with the Class Environmental
11 Assessment for Shoreline and River Bank Improvements,
12 Exhibit 255? (Handed)

13 A. Not particularly.

14 Q. I see, okay. So you are not
15 familiar. Are you familiar with my cross-examination
16 of Mr. Kenrick with respect to that particular
17 document?

18 A. I have read it, but not recently.

19 Q. So it looks like everybody has read
20 Mr. Kenrick's cross-examination or evidence.

21 Well perhaps, sir, then I will -- I know
22 you don't have this document, and if Mr. Freidin will
23 allow me, I will simply read into the record -- this is
24 at page 8505, and I pointed that to Mr. Kenrick
25 question:

1 "Q. Mr. Kenrick, is it possible that the
2 Ministry of Natural Resources would
3 consider and adopt some of the forms and
4 some of the procedures as identified in
5 this Class Assessment for the purposes of
6 this Class Environmental Assessment?

7 MR. KENRICK: A. I don't know.

8 Logically I can't see a problem with it.

9 I would have no problem with a check list
10 like that, for instance..."

11 My question is: Is that a cook book?

12 MR. CLARK: A. It is not necessarily a
13 cook book and I think we are dealing with an important
14 issue here as far as the Ministry is concerned.

15 In my testimony, I talked about the kind
16 of information and quality and quantity of information
17 and I made a very clear distinction between them. In
18 fact, in my evidence, I had a Table 5A that showed the
19 kind of information that are normally available at the
20 management unit level and the point that I made at the
21 time was that that table did not specify the quality or
22 quantity of that information and I went on to say that
23 I felt that it was very important that the Board
24 recognize that decisions concerning the quality and
25 quantity have to be made at the local level by

1 qualified people with training, with local knowledge
2 and experience.

3 You can provide direction of the kind
4 that you see in this sort of table as a kick start, if
5 you want, something to jog peoples' memories to make
6 them think of the kinds of things that they should --
7 or relationships that they should be looking at, but I
8 think you have to be very careful at the same time to
9 encourage staff to act independent in a professional
10 way with a knowledge of local situations.

11 And that is the basis in which we try and
12 incorporate the variability that occurs throughout the
13 area of the undertaking.

14 Q. Is this a cook book or not, sir? You
15 can say yes or no, or you have no views on it.

16 A. It can be a cook book if it is used
17 incorrectly, that is the point I am making.

18 Q. So it is not the question of
19 developing a list, per se, that determines whether it
20 is a cook book; it is the use, is that what you are
21 trying to say?

22 A. To a large extent, yes.

23 Q. So it is inflexibility with which
24 people would use material such as this that is the
25 issue; is that correct, sir?

1 A. I believe so.

2 Q. You are not familiar -- let me go
3 back then and ask about other cook books. Moose
4 Guidelines, are they cook books?

5 A. Blind application of the guidelines
6 in the absence of local knowledge and experience, I
7 would say could be construed as using them as a cook
8 book. The word I would stress there is they are
9 guidelines; they provide direction, they provide a
10 context within which people at the local level can
11 assess local situations and make reasonable judgments.

12 Q. So, therefore, would it be your
13 professional opinion that it is very difficult to
14 establish effective guidelines for timber management at
15 a fairly general level and that you must have
16 information at a local level?

17 A. I would agree with that.

18 Q. Thank you.

19 MR. HUNTER: Mr. Chairman, one of the
20 rules I think of counsel who act for Indian groups is:
21 You don't ask questions about comments about other
22 tribal groups or treaty groups or regional groups, and
23 that's why I am not asking any specific questions about
24 Treaty 3.

25 THE CHAIRMAN: Well, they are represented

1 in this hearing in any event.

2 MR. HUNTER: That's correct.

3 Mr. Chairman, all I am doing is, I think
4 Mr. Clark has been very helpful and I am simply trying
5 not to repeat any of the cross-examination.

6 Q. Mr. Pyzer, if I can draw your
7 attention to page 8826.

8 MR. PYZER: A. I have that.

9 Q. Are you uncomfortable referring to
10 interest groups as stakeholders. I see the exchange
11 between you and Mr. Martel. If you look at Panels 6
12 through to 10 and then Mr. Martel's comment and then
13 you say:

14 "Whoever, I don't know who the public is
15 any more, we have refined that so far
16 down."

17 A. Yes.

18 Q. I conceptually have some problems
19 with that. Could you help me?

20 A. Sure. You know, in fact, I wanted to
21 say something when you were asking the question about
22 Indian reserves in that question of Mr. Kennedy where
23 we had italicized in some words down there.

24 Obviously we try to contact everyone who
25 has an interest in what we are doing and I think part

1 of the problem with that was that they didn't recognize
2 possibly that they would be a municipality.

3 I can view Indian reserves more or less
4 as municipal governments, or as a form of community
5 that is there. And right now I think part of the
6 problem with a lot of organizations, unless they see
7 themselves written down, they can't identify where they
8 are in the exercise, and we tend to talk about the
9 public.

10 And the point I was making here is that,
11 like, who is the public? Is the public at this
12 session? Is the public before the Board here? And
13 that is all I was trying to say.

14 I am not sure that the public is here.
15 We have a large number of -- we have some groups. I
16 would actually hasten to say we probably have more
17 groups at average timber management planning exercise
18 in Kenora than are represented right here at this
19 Board.

20 So does that mean I have more of the
21 public than the Board does, or less? I guess what I'm
22 saying is that we talk about the public, but I am not
23 sure who the public is any more.

24 We deal with anglers' groups, we deal
25 with native Indian reserves, we deal with municipal

1 government, we deal with tourist operators. Having
2 gone through all of those stakeholders, all of those
3 clients, I am just not sure if there is anyone out
4 there who isn't at least a member or associated with
5 one of those.

6 And if they are or are not rather, then
7 we still have all of the public consultation processes
8 where the public, if you will, can still come forward
9 and be part of the process. And that is all I was
10 trying to say.

11 Q. When you say that, sir, though it
12 causes me some concern because one would have thought
13 that would be a very preliminary step in attempting to
14 define your consultation and planning process.

15 My sense is that your definition of
16 public is in relationship to - and that may be fine, I
17 don't know, I am not here to argue with you about
18 that - I am simply trying to understand what is the
19 analytical framework within which you are working.

20 Correct me if I'm wrong: Does public
21 really translate itself into an identifiable interest
22 group? If it doesn't, then tell me.

23 A. Well, I guess that was the point I
24 was trying to make is that we are dealing with, again,
25 all of the groups that are here. We are dealing with

1 Indian people as a stakeholder group, we are dealing
2 with tourist operators as stakeholders, we are dealing
3 with commercial fishermen, with fur trappers, with
4 people concerned about archaeological resources, with
5 environmentalists with naturalists, with Crown land
6 recreationalists, with anglers, with hunters and when
7 you go through all of those lists, all of those
8 categories - I think this was -- and Mr. Martel's
9 question about the public - well, again I am just not
10 certain there is anyone left out there who isn't a
11 member of all of those groups.

12 Q. But they are defined through the
13 group?

14 A., Pardon me?

15 Q. They are defined through the group?

16 A. Exactly.

17 Q. And what is the relationship of those
18 groups to your programs? Is that the other way in
19 which you define stakeholders, it's through your
20 program areas?

21 I mean, do these individual interest
22 groups relate to your program areas? That is
23 essentially what I am trying to get at.

24 A. Not necessarily. Yes and no.
25 Certainly commercial fishermen is one example,

1 obviously relate to our fisheries program.

2 Q. Mm-hmm.

3 A. Municipal government -- an Indian
4 reserve, they obviously relate to all of our programs,
5 some more than others. A Whitedog Indian reserve which
6 is becoming more heavily forestry oriented now will
7 have probably better than one half of the entire Minaki
8 Crown Management Unit allocated to them.

9 We are removing 13 existing operators so
10 that Whitedog will be the prime forest harvestor in the
11 Minaki Crown as an example. If I was to characterize
12 Whitedog as an Indian reserve, they are starting to
13 have an infrastructure which is more forestry-related.
14 We now have a greenhouse, a million and a half million
15 dollar greenhouse that is going to be producing
16 3-million trees.

17 Now, you take look at a Grassy Narrows.
18 Grassy Narrows is more of tourism oriented. Grassy
19 does not want the greenhouse and they have bought Bald
20 Lake Lodge and they are certainly going more the
21 tourism route. That is not to say -- I guess the point
22 I am trying to make is, it is difficult to say that
23 they -- any one of those communities or a Kenora or a
24 Sioux Narrows or a Nester Falls fits only in one
25 program. Obviously they are complex and diverse

1 enough that all of our programs are related to those
2 communities.

3 Q. If one someone has a educational
4 concern, a training concern, a socio-economic concern
5 in relationship to timber management activities, how do
6 they relate to your Ministry in that context?

7 How does the social - if there is, I
8 don't know - the Social Planning Council for Kenora or
9 Nipigon, do they have any involvement with the Ministry
10 of Natural Resources?

11 A. In my experience, I have no
12 experience in that. So, you know, generally I don't
13 know whether they do or don't. I have not had any
14 experience with the Kenora Social Council in timber
15 planning.

16 MR. HUNTER: Just one moment, Mr.
17 Chairman. I think, Mr. Chairman, I only have one or
18 two more questions.

19 Q. Mr. Clark, correct me if I'm wrong,
20 but I believe this is your evidence and it is on
21 9370 -- or perhaps not, perhaps it is Mr. Pyzer's.

22 This is from last Monday's cross and
23 literally I was getting it in pages today, so it is
24 Volume 55, Mr. Chairman, and particularly 9370, and it
25 is in relationship to -- yes, it is, it is Mr. Pyzer's

1 evidence.

2 "A. I think one of the problems is, and
3 it is our problem in terms of
4 understanding, is that we are not like
5 Ontario Hydro, we are not a big project.
6 the way Ministry does business, we don't
7 parachute a planning team, if you will,
8 into districts."

9 Could you help me with that, please, in
10 terms of what were you meaning when you said that?
11 What did you mean when you said that?

12 MR. PYZER: A. Well, I think that timber
13 management is not a project, if you will, it is a
14 process which is ongoing all the time and I was
15 likening timber management planning to, say, building a
16 nuclear power plant or building a dam somewhere, and
17 the typical procedure for doing that is that you hire a
18 consultant or you hire someone, and usually in our
19 situation they come in from southern Ontario and they
20 usually raid our databanks and come to us for all the
21 information.

22 But the frustration that you often hear
23 of people in the north is that these people come in to
24 do this great project and they don't understand us.
25 They don't understand -- you know, you bring, with all

1 due respect a planner or whoever in from --

2 Q. Worse a lawyer?

3 A. You said it Mr. Hunter, not me.

4 Q. It is all right, I have thick skin.

5 A. But you bring them in from south of
6 Bloor Street and it takes a long time, it takes a long
7 time to understand someone who has grown up in Kenora
8 or Grassy Narrows or Whitedog, in terms of how they
9 live, what they do, how they view the environment and
10 those sorts of things, and they spend a great deal of
11 time in those planning processes and exercises related
12 to a big project; they spend a great deal of their time
13 and some would say they never, ever come to the bottom
14 line of truly understanding how it is that northerners
15 think and conduct their lives and conduct their
16 business.

17 We are different from that, I believe, in
18 that we live in those communities, that we are part of
19 those communities, we socialize with those people, we
20 are meeting with Indian people on a daily basis, we are
21 meeting with commercial fishermen on a daily business,
22 we are meeting with recreationists, with anglers and
23 hunters. We have a feel for what they are doing in our
24 part of the woods.

25 The tourist industry, NOTOA, is one

1 example. I get calls quite regularly from NOTOA asking
2 if I can synthesize for them what their concerns are.
3 And I will be honest with you, I have had Indian people
4 ask me about who they should hire and how they should
5 conduct themselves at these very hearings. We have
6 done that socially off on the side.

7 And I am just saying that when you live
8 in those communities and when you know those people, it
9 is an extremely valuable experience and it helps in
10 your day-to-day job, unlike Ontario Hydro or some other
11 organization which is coming in totally out of the
12 outside trying to pick up a 20 or 30 or 40 or 50 years
13 of having lived there and felt that.

14 Q. So that's what you refer to as in a
15 kind of Hydro syndrome of planning?

16 A. Correct.

17 Q. Would you extend that concern to the
18 type of planning that Hydro has done with respect to
19 the Class Assessment on Hydraulic Activity in Shoreline
20 Improvement, which is the document that I give to Mr.
21 Clark?

22 Are you familiar with that document?

23 A. No, I am not.

24 Q. No.

25 A. But I suspect - and not having read

1 it - but I suspect one of the reasons for having put
2 together a checklist is because you don't understand or
3 you don't have a good feel that that would be one of
4 things that you would absolutely feel that you had to
5 do, to try and get a sense of what -- I would suspect
6 that most people working for us would know right off
7 the top of their heads in terms of a sense and a feel.

8 That's the reason why, in terms of the
9 cookbook approach as Mr. Clark talked about, why -- and
10 we talk about it in that fashion, I guess. But I can
11 see why Ontario Hydro would feel more comfortable
12 coming in from outside, feeling in that kind of an
13 environment, for that kind of a project that they would
14 want to do that. I can also understand why we may not
15 want to do that very same thing or feel that we have to
16 do it the way they do.

17 I really believe that in any problem
18 there are probably 13 ways to solve it, 12 good ones.
19 Probably Ontario Hydro has developed a good one for
20 their approach. I believe we have developed a good one
21 for ours. I don't believe there is only one way to
22 solve any one problem.

23 Q. I see. So you believe that the
24 checklist idea -- as I understand it, the checklist in
25 that document and others is for the purposes of

1 obtaining information is -- well, simply put: Do you
2 share Mr. Clark's view that it is too rigid?

3 A. Again, for Ontario Hydro, given the
4 scenario within which they operate and, first of all, I
5 am not sure he said it was too rigid, but I suspect
6 that for Ontario Hydro it is probably a good process,
7 but that's not to say because it is good for Ontario
8 Hydro it is good for the Ministry of Natural Resources,
9 when we have 6,500 people, most of them scattered in
10 the field, when I have 55, 60 people who have lived in
11 Kenora District for a long time.

12 They are probably -- there is probably
13 not one Ontario Hydro planner who lives in northwestern
14 region, but we have several. So what is good for Hydro
15 is good for Hydro maybe, I am just saying it doesn't
16 necessarily equate that it's good for Ministry of
17 Natural Resources. Plus Hydro does very site-specific
18 projects; we do long-term processes which carry out
19 over a long period of time, it is not something that
20 you come in, plan for once and then leave. We are
21 there from the beginning to the end and we are there
22 for the next time around as well.

23 Q. Well, I am curious about what you say
24 is good for Hydro is not good for MNR.

25 MR. FREIDIN: Not necessarily.

1 MR. HUNTER: Q. I am not sure that
2 that's the material issue. It seems to me that the
3 purposes of their Class Assessment is what is good for
4 the best management of the environment. That ought to
5 be the test as to whether something is good or not, not
6 whether it is good for MNR or good for Hydro, it is
7 whether or not this is an effective planning tool for
8 managing the environment and natural resources.

9 A. That's correct.

10 THE CHAIRMAN: Mr. Hunter, are you
11 suggesting that there is only one good way of managing
12 the environment?

13 MR. HUNTER: No, Mr. Chairman, I am not.
14 I am simply seeking to clarify what is the basis of Mr.
15 Pyzer's and Mr. Clark's concern with the way that Hydro
16 has dealt with the problem and the response seems to be
17 that it is better for Hydro.

18 I am simply trying to say: Is that the
19 appropriate test to make? Maybe there are better ways
20 of doing it, that's something which we will have to
21 deal with in terms of our position in direct evidence,
22 I am trying to understand the basis of why they are
23 rejecting, or as I put it, referring to the Hydro
24 syndrome.

25 MR. PYZER: I think it is really because

1 of our organizational structures. Our organization and
2 administrative structures are two totally separate
3 entities. We are not organized the same and that leads
4 me to that conclusion, plus the fact that we deal with
5 long-term processes; they tend to deal more with
6 site-specific projects, and I am certainly not
7 discounting what Hydro has done here.

8 I suspect their reaction would be, when
9 you see MNR's final approved Class Assessment, that
10 they would say that doesn't fit our structure either
11 because of the way we do our business.

12 So I would suspect that they probably
13 wouldn't want to wholeheartedly adopt MNR's approach
14 any more than we would wholeheartedly want to adopt
15 theirs.

16 MR. HUNTER: Q. Mr. Pyzer, just perhaps
17 just one last question then.

18 I don't really understand why there is a
19 difference between MNR, who is sitting down and
20 attempting to plan long-term timber management
21 activity, versus Ontario Hydro, who is sitting down and
22 is planning long-term electrical or hydraulic
23 generation in northern Ontario.

24 In other words, they will have to sit
25 there and manage the project and its impacts to 5, 10,

1 15, 20 years. It seems to me that in relationship to
2 the environment and to the management of resources, the
3 objectives of both organizations are not that
4 dissimilar.

5 MR. PYZER: A. The bottom line -- the
6 objective certainly isn't different, I would grant you
7 that, but again I keep coming back to the -- I am sure
8 what that Ontario Hydro has done here is good for
9 Ontario Hydro.

10 It is just that you simply can't, in
11 terms of administrations and organizations, pick up one
12 person's planning process or procedure or organization
13 or administration and say that that's going to work for
14 everyone else any more than the way that the Government
15 of Canada or the Government of Ontario is structured,
16 means that that is going to be the best for the United
17 States of America. They have a totally different
18 system of government, so what.

19 Q. That too will change.

20 MR. CLARK: A. Mr. Hunter, I think you
21 may be a little confused here. I don't think that we
22 have any particular aversion to providing direction or
23 guidelines or even check sheets.

24 What we are trying to demonstrate is
25 probably what we feel is one of the real strengths of

1 our organization and it is not that we don't use
2 guidelines, because obviously we do; we have moose
3 guidelines, fish guidelines, tourism guidelines,
4 planning guidelines and a host of other directions that
5 we provide the staff.

6 I think the point we are trying to make
7 and have been trying to make over and over again is
8 above and beyond that, we have qualified people in the
9 field who have local knowledge and can make intelligent
10 judgments that allow not only for the general direction
11 that's provided, but can also take into account the
12 local situation.

13 And I think it is that sensitivity that
14 we are trying to stress, it is that balance between
15 providing that kind of general direction and, at the
16 same time, have people who are mindful of the local
17 situation. So it is not so much that we have any
18 particular aversion to those things, it is just that
19 what we are trying to do is emphasize, we think from
20 our perspective, from the way we are organized, that
21 having people at the local level greatly assists us in
22 tailor making the kind of recommendations we make, for
23 example, in timber management planning at the local
24 level.

25 Q. Well, I think Mr. Clark, my concern

1 - is equally for the purposes of my clients trying to
2 find a balance, and what I hear you saying is that the
3 balance, as you see it, ought to be substantially
4 directed towards the local level without, from my
5 perspective, substantial enough guidelines affecting
6 the discretion and your decision-making in relationship
7 to my clients, and that's what this hearing is all
8 about.

9 MR. HUNTER: I have no further questions,
10 sir.

11 THE CHAIRMAN: Thank you, Mr. Hunter.

12 Well, ladies and gentlemen, we have
13 reached the stage in the hearing where I think we are
14 at an impasse in the sense that Mr. Williams is not
15 present to continue with his examination, Mr. Campbell
16 is not present to continue with his, at the moment.

17 Ms. Swenarchuk?

18 MS. SWENARCHUK: I think in my
19 cross-examination I indicated that I might wish to put
20 some questions to Mr. Ward regarding the fisheries
21 enforcement manual and I have perhaps five minutes of
22 questions for him. I would like -- I wasn't expecting
23 to do this, I would like a moment to get the fisheries
24 guidelines as well.

25 THE CHAIRMAN: Okay. I think we can deal

1 with that now. But the Board had something else in
2 mind and that is, as we understand it, we have Mr.
3 Williams who is scheduled to go first thing tomorrow
4 morning for no more than three hours, according to our
5 discussion last week, followed by Mr. Campbell who was
6 not going to take more than half a day at the outside,
7 and then followed by Mr. Freidin in re-examination.

8 And I believe you indicated, Mr. Freidin,
9 you would probably not be more than two or three hours
10 at the --

11 MR. FREIDIN: An hour and 20 minutes.

12 THE CHAIRMAN: Sorry, an hour and 20
13 minutes at the most.

14 And then counsel were going to break for
15 the afternoon to try and discuss the Board's
16 suggestions of last week regarding scoping and we were
17 going to have a discussion of that on Thursday.

18 The Board is going to now suggest that
19 counsel get together after this session and tomorrow
20 night's session -- or after tomorrow's session and that
21 we discuss this Wednesday afternoon rather than
22 Thursday morning, because we are quite prepared, as you
23 are aware, to sit fairly lengthy hours in terms of
24 accommodating as much hearing time as possible, and yet
25 we are running into problems in the last couple of

1 weeks - and this is not a problem in the sense that
2 counsel are finishing earlier than otherwise
3 anticipated, we certainly applaud that and encourage
4 that - it is just that other parties who follow that
5 counsel, for one reason or another, are not either
6 present or ready to go. And we find that we are, in
7 fact, available to sit longer hours and yet we have not
8 got the parties before us to present the evidence.

9 So we see absolutely no reason whatsoever
10 why we should hold over the discussion until Thursday
11 when, effectively, we will be finished Wednesday around
12 noon or before noon with Mr. Freidin's re-examination
13 and it seems to us that -- we only commenced this
14 session at one o'clock today, we will probably be
15 finish, even with your few questions, Ms. Swenarchuk,
16 by 4:15, and it seems to us that there is sufficient
17 time for the parties to get together for a discussion
18 some time today, sometime after tomorrow's session and
19 then we can discuss it Wednesday afternoon.

20 Mr. Freidin?

21 MR. FREIDIN: Submissions? I find that
22 an unsatisfactory suggestion, Mr. Chairman. There are
23 counsel who are not here. The idea was that all
24 counsel would meet --

25 THE CHAIRMAN: Mr. --

1 MR. FREIDIN: Can I finish, Mr. Chairman.

2 All counsel who would have to deal with
3 this matter are not here. The idea was to get all
4 counsel together at one time, discuss this matter and
5 see whether in fact some joint submission could be made
6 to you.

7 I think it would be helpful to the Board
8 if in fact that sort of a solution can be attained. I
9 don't believe that your suggestion assists that
10 particular possibility.

11 Secondly, I have commitments which have
12 been well planned out for tonight and for tomorrow
13 night in relation to the evidence of this panel. It is
14 the commitments which I have made which will hopefully
15 allow me to do the re-examination in one hour and 20
16 minutes or for me to do it in an limited period of
17 time.

18 So, therefore, I just wanted to go on the
19 record that I do not feel that your suggestion would
20 work. I think it would be prejudicial to the parties
21 who are here and who are ready to go.

22 My witnesses are here, they were ready to
23 go last week, they are ready to go today. If other
24 counsel do not attend, then that is not something which
25 I think should prejudice my client's ability to put

1 forward its submissions in a full and meaningful way.

2 Thank you.

3 THE CHAIRMAN: Well, just to answer some
4 of your specific concerns. I understand that Mr.
5 Campbell will be here shortly so that he might take
6 part in these discussions.

7 MR. COSMAN: Just a point of information
8 on that, Mr. Chairman. I know that Mr. Campbell has
9 commitments for this evening and that is one of the --
10 you may recall he indicated to us he was meeting with
11 clients over this evening and that's why he would not
12 be available on the Monday evening.

13 I am certainly available, but I think the
14 problem is as presented by Mr. Freidin, counsel -- the
15 unavailability of Mr. Williams, Mr. Campbell not being
16 available this evening does create the kind of problem
17 that is --

18 THE CHAIRMAN: What about discussing this
19 tomorrow evening after tomorrow's session because it is
20 unlikely, depending on how long Mr. Campbell will be,
21 that we are going to finish tomorrow later than 3:30 or
22 four o'clock as well.

23 MS. SWENARCHUK: It seems more possible,
24 Mr. Chairman.

25 MR. FREIDIN: I would suggest leaving the

1 decision until tomorrow and let's address it tomorrow.

2 THE CHAIRMAN: All right. Now, the other
3 person that we are going to be dealing with I think is
4 Mr. McCreadie with respect to the orientation session.
5 We understand that he is here today.

6 Could he present that today as opposed to
7 tomorrow?

8 MS. BLASTORAH: Mr. Chairman, I am going
9 to be presenting Mr. McCreadie's information with him
10 about the site visit and I haven't even had a chance to
11 speak to him yet.

12 THE CHAIRMAN: So that would be better to
13 do tomorrow?

14 MS. BLASTORAH: That's what I was going
15 to be doing this evening.

16 THE CHAIRMAN: Okay. All right. We will
17 leave it to make this decision tomorrow depending on
18 how far we go tomorrow and how much time is available
19 so that counsel can get together tomorrow to discuss
20 the Board's suggestions.

21 I might make this observation though. I
22 think in the future, since it is impossible to predict
23 with accuracy how long counsel is going to take with
24 any particular evidence, that those counsel who are
25 going to follow should be prepared to go when the

1 counsel preceding them finish.

2 If not, they may find themselves at some
3 stage of the game out of luck. We cannot conduct this
4 hearing for the length of time it is scheduled to go
5 and start wasting hours, virtually, because counsel are
6 not ready to go and they have been slotted into a
7 specific day.

8 I think we have been trying to
9 accommodate counsel to this point by saying you will
10 not have to go until such and such a day based on
11 estimates of other counsel, but we are finding that
12 this is wasting several hours' of hearing time and, as
13 you know, we are doing our best to try and expedite
14 this whole process.

15 So I think, in the future, counsel are
16 going to have to conduct themselves accordingly, keep
17 in touch with the counsel preceding them as to actually
18 when they might be expected to go on and then be
19 prepared to go on at that time.

20 We will allow, in certain instances, a
21 juggling around of the order where we can assist
22 counsel, but in cases that have arisen in the last --
23 instances that have arisen in the last couple of weeks
24 we have not been able to do that. Counsel who are
25 supposed to go on are just not prepared to go on.

1 So keep that in mind, because I think the
2 Board is going to apply with a little more vigor the
3 order of examination in this hearing from now on.

4 MR. HUNTER: Mr. Chairman, if I might,
5 without undue sensitivity, the principal reason why we
6 are trying to structure or cross-examination, to put it
7 very bluntly, is a question of cost, being in a
8 position of not being able to simply take a day or a
9 half a day and wait, and certainly in terms of
10 additional costs which --

11 THE CHAIRMAN: Well, again, I understand,
12 Mr. Hunter, and I know that various of the parties have
13 those kinds of problems, a resource problem, but by the
14 same token, we do not want to be put into a position of
15 commencing at one o'clock on an afternoon, finishing at
16 four, when really we could be hearing another two
17 hours' or two and a half hours' on a day like today,
18 more evidence, and thus shortening up the whole thing.

19 MR. HUNTER: I could have taken longer.

20 THE CHAIRMAN: No, we are not suggesting
21 in any way, shape or form that you should be taking
22 longer. Obviously, we want counsel just to put forward
23 the case that they feel is necessary, but other counsel
24 should be prepared to go on where possible.

25 MR. HUNTER: Mr. Chairman, I would

1 certainly appreciate it if we could meet on Wednesday
2 afternoon to discuss the issues which have to be
3 addressed for the very reason I am staying rather
4 than --

5 THE CHAIRMAN: Again, just looking at the
6 timing for the rest of this week, we see absolutely no
7 cogent reason to have to stay over on Wednesday night
8 and Thursday morning to have that discussion when, in
9 fact, there should be some hours available to counsel
10 prior to then because of the way the evidence will be
11 foreshortened in terms of coming in this week.

12 MR. HUNTER: Thank you.

13 THE CHAIRMAN: It is just utilizing the
14 resources of the Board and a lot of support staff, I
15 would suggest, in a very unwise fashion for all of us
16 to have to stay up here just to accommodate a session
17 on a particular day when circumstances change in terms
18 of the evidence.

19 Okay. I think we will proceed with you
20 Ms. Swenarchuk, if we might.

21 MS. SWENARCHUK: If I can just have --

22 THE CHAIRMAN: Do you need a moment to
23 get your other documents?

24 MS. SWENARCHUK: The fisheries
25 guidelines, yes, Fisheries Habitat Guidelines.

1 THE CHAIRMAN: If somebody could provide
2 them here, would that assist you?

3 MS. SWENARCHUK: Yes, and then I need to
4 find the suitable passage.

5 THE CHAIRMAN: Well, do you need ten
6 minutes, say?

7 MS. SWENARCHUK: Five minutes, ten
8 minutes.

9 THE CHAIRMAN: All right. We will
10 adjourn for ten minutes.

11 ---Recess taken at 4:05 p.m.

12 ---Upon resuming at 4:20 p.m.

13 THE CHAIRMAN: Thank you. Be seated,
14 please.

15 Ms. Swenarchuk?

16 MS. SWENARCHUK: Mr. Chairman, I am
17 referring to a document which everyone does not have
18 copies of, which Mr. Ward referred to in his
19 cross-examination, the Eastern Region Fish Habitat
20 Protection Enforcement Guidelines.

21 FURTHER CROSS-EXAMINATION BY MS. SWENARCHUK:

22 Q. I don't have the transcript from that
23 day, but if I recall your evidence correctly, Mr. Ward,
24 you were saying that this manual would be the prototype
25 for enforcement of fisheries-related regulations in the

1 field; is that right?

2 MR. WARD: A. For fish habitat
3 protection--

4 Q. Right.

5 A. --regulations, yes.

6 Q. Right. You have it in front of you,
7 do you?

8 A. I do.

9 Q. Okay. Now, there was some reference
10 in Panel 6 to wetlands and I want to ask you a few
11 questions from this manual about wetlands protection.

12 First of all, would you agree that
13 wetlands are often highly productive as breeding
14 grounds and nursery areas for various species of game
15 and fish?

16 A. Yes, I would.

17 Q. Now, is this manual intended to be
18 the enforcement manual for wetlands protection?

19 A. Not necessarily so, no.

20 Q. Is there another manual then within
21 the Ministry which would serve that purpose?

22 A. Not that I'm aware of. This one is
23 related to fish habitat. So if a wetland provided some
24 sort of fish habitat, they would use this manual for
25 some direction, but if it was a wetland that didn't

1 have fisheries values there, then not necessarily --
2 they wouldn't use this manual for that.

3 Q. Okay. Now, if we can turn to page 17
4 of the manual and I will just read out this paragraph
5 realizing that other people do not have the document.
6 The heading at the top of the page is Referral Process,
7 and the first paragraph reads like this:

8 "Enough cannot be said about the need for
9 a properly functioning referral system
10 within the Ministry of Natural Resources.
11 The best time to prevent destruction of
12 fish habitat is at the early proposal
13 stage when an application is received by
14 MNR. It is essential that a proper
15 response system be established within all
16 district offices to ensure that no
17 proposed work which could result in
18 adverse effects on fish habitat is
19 responded to without review by the
20 appropriate fisheries staff. In other
21 words, Lands Branch personnel must have
22 enough knowledge of fisheries concerns to
23 be able to pick out possible problem
24 applications and ensure that a review by
25 fisheries staff is undertaken."

1 Now, Mr. Ward, at this point, do you and
2 other fisheries personnel engage in systematic review
3 of all projects within your district which might have a
4 fisheries habitat potential impact?

5 A. Yes, they would.

6 Q. Could you expand on that a little
7 bit?

8 A. Well, in terms of work permits, I
9 guess, that are issued by any branch in the district,
10 there is normally a circulation procedure that goes
11 from branch to branch for their comments or opinions on
12 that type of activity. So it could be initiated by
13 Lands Branch, it could be initiated by Timber Branch or
14 whatever.

15 Q. And are you satisfied now with the
16 functioning of this referral system? Could you propose
17 any improvements?

18 A. Well, I think in terms of the
19 process, I think the process is a good one in terms of
20 the district and the only way I would see in terms of
21 improving it, I think we are looking at under the
22 Public Lands Act having a multi-work permit, I guess.

23 Right now we are issuing a permit under
24 the Forest Fires Prevention Act and I believe the
25 Public Lands Act is being revised and we will have a

1 multi-work permit, I believe it is called, so that we
2 would be able to handle -- any kind of activity on
3 Crown land would fall, they would have to have a
4 permit, like, for a mining company would need a permit
5 for doing any kind of exploratory work for mining and
6 it would be circulated through all the district
7 services or branches for comment.

8 I know when I worked in Red Lake, we --
9 that was one of the biggest parts of our workload, we
10 would often get several of these permits across our
11 desks for comment, a lot of them related to mining, and
12 we had developed a questionnaire that we wanted a
13 mining company to fill out in terms of -- because in
14 many cases they just put: We are going to do
15 exploratory work for mining, but they wouldn't indicate
16 whether they are going to do blasting near water or
17 drilling on the ice or whatever.

18 So we were asking for more specific
19 information so we could determine whether there would
20 be any potential impacts on fish habitat.

21 Q. Okay, just one last question. The
22 manual, as you indicated in your evidence earlier,
23 really speaks to enforcement of the Fisheries Act
24 provisions for habitat protection, but those
25 provisions, of course, are not as explicit as the

1 provisions in MNR's Fish Habitat Guidelines, such as,
2 for example, the widths of areas of concern in specific
3 circumstances.

4 So how do you propose to ensure that
5 those provisions within the Fish Habitat Guidelines are
6 in fact put in place in each timber management planning
7 process and what kind of enforcement response do you
8 propose from MNR where a company does not comply with
9 the guidelines?

10 MR. FREIDIN: Mr. Chairman, I can perhaps
11 just advise that Panel No. 16 dealing with monitoring,
12 both compliance monitoring and effectiveness monitoring
13 will be addressing both the subject matters of how you
14 are going to ensure, in terms of plans, are carried out
15 as approved. I think that is what the question is
16 dealing with.

17 MS. SWENARCHUK: I don't think that
18 precludes putting to this fisheries expert the
19 question.

20 Q. Has any thought been given to this
21 question, Mr. Ward?

22 MR. WARD: A. Certainly it has. We use
23 the term compliance monitoring as opposed to
24 effectiveness monitoring, which we have talked about
25 before in terms of evaluating how effective our

1 guidelines are, and the Board and parties will hear
2 more about this in other panels about the ESSA proposed
3 effectiveness monitoring program.

4 But the compliance monitoring is
5 something that we thought about and we have instituted
6 in many ways in terms of training staff, I guess, at
7 the district level to make sure that whenever you
8 review a timber management plan you have got something
9 on paper, you want to make sure that what we have got
10 on paper is carried out in the field; in other words,
11 where we want reserves located, they should be there.

12 And I think we have talked in some of the
13 previous testimony about -- under the Crown Timber Act
14 in terms of trespass, in terms of areas that are
15 reserves, that would be something we would use for
16 straight enforcement that our timber technicians would
17 enforce.

18 We have -- some of our districts have
19 integrated resource management technicians whose main
20 job is to develop prescriptions working with fisheries
21 biologists in timber management plans and also
22 evaluating to see what is actually occurring in the
23 field, not just from a fisheries perspective but from a
24 wildlife perspective, from the environmental guidelines
25 for access roads and water crossings, whether those

1 things are followed when they are building roads and so
2 on. That is certainly going to be a major part of
3 their job.

4 Q. Are any of those people in place
5 carrying out those jobs now?

6 A. Some of them are, yes.

7 Q. Could you tell us where?

8 A. Well, I know in Red Lake we have an
9 integrated resource management technician and that is
10 sort of his main job, is input into timber management
11 plans and to ensure that the prescriptions outlined in
12 the timber management plans are followed.

13 I see it as evolving -- getting our
14 conservation officers involved in that as well in terms
15 of enforcement, say, fisheries habitat violations or
16 any other kinds of things, because there is a certain
17 process in terms of collecting evidence; if you see a
18 violation, that conservation officers have training in,
19 and actually are integrated resource management
20 technician is a deputy conservation officer, he has
21 that authority.

22 So I see him as working with conservation
23 officers and, you know, in their patrol area and
24 saying, you know, This is the kind of thing that should
25 have occurred, or if it hasn't, they may be working

1 together on it, but that is how I see it evolving.

2 MS. SWENARCHUK: Okay. Those are my
3 questions, Mr. Chairman. I don't recall whether this
4 document was marked as an exhibit last week. No.

5 THE CHAIRMAN: I don't believe it was.

6 MR. FREIDIN: I don't know.

7 MS. BLASTORAH: No.

8 MS. SWENARCHUK: The copy that I have is
9 a draft manual. Does the manual only still exist in
10 draft; that is, mine is marked draft, and it is
11 undated?

12 MR. WARD: My copy isn't marked draft, it
13 is just -- it is a manual that has been produced by the
14 eastern region, and we were going to produce a similar
15 one for the northwest region.

16 Actually, we had a seminar last March
17 where we have had a couple of our conservation officers
18 outline sort of their experiences enforcing the
19 Fisheries Act in the northwest region and there are
20 certain steps and things they had learned in their
21 experience that they wanted to pass on to the rest of
22 the conservation officers in the northwest.

23 And our idea was that we were going to
24 develop a manual like this and our regional enforcement
25 specialist, in terms of provincial meetings, who

1 represents our region in a provincial enforcement
2 committee, said that the eastern region has produced a
3 similar document, we will see what they have produced
4 and if it is applicable for us, we will get copies and
5 that is how I became aware of this.

6 THE CHAIRMAN: All right. Well, can we
7 give this a number at this point, and will you
8 undertake, Mr. Freidin, to produce a copy to mark as
9 the exhibit?

10 MR. FREIDIN: Yes, Mr. Chairman.

11 MS. SWENARCHUK: And Mr. Freidin has just
12 indicated to me that it does exist in draft still.

13 MR. FREIDIN: It is a draft, it is still
14 a draft document.

15 THE CHAIRMAN: All right. It will be
16 marked Exhibit 372.

17 ---EXHIBIT NO. 372: Draft Manual entitled: Eastern
18 Region Fish Habitat Protection
Enforcement Guidelines.

19 MS. SWENARCHUK: Thank you, Mr. Chairman.

20 THE CHAIRMAN: Thank you, Ms. Swenarchuk.

21 All right, ladies and gentlemen, that
22 ends the session I think for today. We will adjourn
23 until tomorrow at, I think, 9:00 a.m., we will start a
24 little bit earlier.

25 The Board has had a short discussion

1 during this most recent break and it is our view that
2 we want to discuss the Board's scoping procedures
3 Wednesday afternoon. Rather than waiting, Mr. Freidin,
4 until tomorrow afternoon, we would like to instruct Mr.
5 Mander to contact certain parties that have been
6 notified previously that it will be on Thursday and he
7 can do that today.

8 We have gone through the timing again for
9 tomorrow. It is our view that we will be finished with
10 the evidence with Mr. Campbell around three o'clock to
11 3:30. We will have Mr. McCreadie give his presentation
12 at that time, and that should not take that long, and
13 then the parties can be allowed the rest of the day and
14 evening to have their discussion.

15 Mr. Freidin, we would be prepared to do
16 this: If you need a little more time to prepare your
17 re-examination tomorrow, and that time will not be
18 facilitated by you taking part in these discussions, we
19 would be willing to commence on Wednesday morning with
20 your re-examination at 10:00 a.m., and you could
21 perhaps use Wednesday morning early to continue with
22 your preparation, if that will help you in taking part
23 in the discussions tomorrow with the rest of the
24 parties.

25 MR. FREIDIN: Oh, I see, not re-examining

1 tomorrow but re-examining on Wednesday morning?

2 THE CHAIRMAN: Re-examining on Wednesday
3 morning and then Wednesday afternoon or upon the
4 completion of your re-examination, we will enter into
5 this discussion that we would otherwise have entered
6 into on Thursday.

7 MR. FREIDIN: All right. Well, perhaps
8 the best thing is to play it by ear and see how things
9 go tomorrow, but I think I will probably take you up on
10 the offer to do my re-examination on Wednesday morning.

11 THE CHAIRMAN: You can take us up on that
12 offer, we are not going to wait until tomorrow to see
13 how it goes with respect to the scheduling of the
14 discussion for Wednesday afternoon, it is so scheduled.

15 MR. FREIDIN: I heard that loud and
16 clear, Mr. Chairman.

17 THE CHAIRMAN: Thank you. Tomorrow
18 morning at 9:00 a.m. Thank you.

19 ---Whereupon the hearing adjourned at 4:35 p.m., to be
20 reconvened on Tuesday, November 15th, 1988,
commencing at 9:00 a.m.

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